

ANCIENT
CRIMINAL TRIALS
IN SCOTLAND;
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CRIMINAL TRIALS
FROM THE OLD SCOTCH RECORDS AND MSS.
IN SCOTLAND.

VOL. II.—PART II.
1600—1609.

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CRIMINAL TRIALS
IN SCOTLAND:

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CRIMINAL TRIALS
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WITH HISTORICAL ILLUSTRATIONS, &c.

VOL. II—PART II.
ROBERT PITCAIRN, ESQ.
1800—1809.

VOL. II
PART SECOND

EDINBURGH:
PRINTED FOR THE BARRATINE CLUB
MDCCLXXXIII.

ANCIENT
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BY
ROBERT PITCAIRN, ESQ.

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THE present PART of this Work will, it is hoped, prove more generally attractive, being of more diversified interest, than any of the preceding portions ; and the Editor believes he does not promise too much, when he adds, that the subsequent Parts must equally surpass the present, as well in point of curiosity as in historical importance.

After the accession of King James VI to the English throne, the Judicial proceedings in Scotland were necessarily conducted with greater minuteness, and were recorded with stricter accuracy, than formerly ; for the various public functionaries, in every department, were liable to be frequently called upon for full reports of individual Cases ; either to gratify his Majesty's craving for whatever was new and curious, or to enable him to judge of the expediency of pardoning or condemning the unhappy persons whose fate must needs be sealed by the unenviable exercise of his royal prerogative. To this circumstance, then, it may perhaps be attributed, that the Records of the Supreme Criminal Tribunal of Scotland, begin to be kept with greater clearness, and their authority and value to be proportionally enhanced.

In Cases of peculiar importance, the Editor has always been anxious to afford all the elucidation within the limited range of his reading and observation, by laying before the reader such illustrations as appeared to him necessary to the better understanding of those Trials ; and especially, to put the reader in possession of ORIGINAL and contemporaneous PAPERS, which generally afford the clearest and best explanation of the many remarkable events which so frequently occur in the course of this Work. He trusts that many of the Documents now for the first time presented to the public, from sources not generally accessible, may be deemed worthy the attention of the lover of History.

It is much to be regretted, that the tragical story of the Murder of SIR THOMAS KENNEDY of Culzean, knight, Tutor of Cassillis, &c. by the MURES OF AUCHINDRANE, which is now rendered imperishable by the pen of the greatest living writer, could not be inserted in the present Part, owing to the chronological arrangement of the book. The Editor did not, in the meantime, consider himself at liberty to publish that most extraordinary Trial as a *separate* volume; but, having his materials for PART VI in considerable forwardness, he is ready to publish that *Fasciculus* at a much earlier date than previously notified, should such be the desire of the public.

The present Series of Trials, during the reign of King James VI, will be completed in four additional Parts, making in all nine Parts, or three large Volumes. Owing to the difficulty of collecting the requisite materials, the publication of the leading trials which occurred in the reigns of King James IV, King James V, and Queen Mary, shall be deferred till after Part VIII is circulated. Should the Editor's health, and his professional engagements, then permit, a new Series of Trials, modelled into the shape of Reports, and in a more modern form than the present, will be commenced. The lengthened pleadings, &c. during, and subsequent to, the reign of Charles I, entirely preclude the idea of continuing the work in the *original* form; which, however useful and interesting such a mode of editing a book of this class may prove, during the earlier period of the history and practice of our Criminal Tribunals, would be cumbrous and useless at a more recent date, when there could be no excuse for continuing the obsolete, and now almost forgotten style of these pleadings, which could yield no pleasure, and but little additional information, to the general reader.

GENERAL REGISTER HOUSE,

12th April, 1830.

deliverance, and of GOWRIE's and his brotheris vile and bloody Conspiracie, intended to be taking away of his Ma's life; as is particularly sett down in the printed book and Acts thereanent, or not? As his doubting of that turne has been the principall cause of the doubt of many, and of his H. slander in that point, if he be willing to utter in pulpit, in such places as shall be appointed, his resolution therein, according to the forme of the said Articles, as clearly, as any his Ma's good subjects have done; craving pardon, and excuseing his long incredulity, and the slander arising thereupon; and wishing the people that anywise doubted thereof, as they were ever ready to conceive doubts upon unjust grounds, only moved by his example, for now to be contented, by his means, rightly to be resolved thereof.¹

(Sic subscribitur) JAMES R.

(9.) THE SECOND CONFERENCE of MR ROBERT BRUCE *with* THE KING.

IN the beginning of Aprile, the Erle of Marr directed a Letter to Mr Robert Bruce, at the King's direction, to come to Brechin, with diligence. Immediately before the receipt of the Letter, he was exercised in prayer, with shedding of tears. When he came to Brechin, as soon as the King saw him, he raised, and came forward to the place where he stood; and looked, as appeared to Mr Robert, very lovingly. He caused void the house,² none remaining but the King and Mr Robert. The King asked, 'If he was resolved?' He answered, 'Yes.' He asked next, 'What moved him?' Mr Robert answered, 'Sundrie things, namely, my Lord of Marr his deep swearing; for I thought (said he) that a Christian, of his quality, could not forswear himselfe, for all the gear in the world!' 'How could he swear?' said the King; 'he nather saw nor heard!' 'I cannot tell that, Sir,' said Mr Robert, 'but indeed he swore very deeply.' The King, understanding what was the forme of the oath, which he repeated to him: 'What was the cause, then,' said the King, 'ye would not trust me?' 'Sir,' said Mr Robert, 'Your Ma. took no pains to informe.' 'I sent,' said the King, 'Sir Thomas Areskine to you.' 'As for Sir Thomas Areskine,' said Mr Robert, 'I trusted him in a part; but their were other things that I thought hard.' 'What was that?' said the King. 'That part which concerned the MASTER OF GOWRIE and your Ma.' said Mr Robert. 'Doubt ye of that?' said the King. 'Then ye could not but count me a murderer!' 'It followeth not, if it please you, Sir,' said Mr Robert; 'for ye might have some secret cause.'³ The King deduced the whole Tragedie, from the beginning. Mr Robert uttered his doubt, where he found occasion. The King heard him gently, and with a constant countenance; which Mr Robert admired.⁴ At last, the King urged him to preach the Articles which were sent to him. Mr Robert answered, he had 'given his answer already to these Articles; and had offered to the Ambassadors that which all men thought satisfaction, yea more than preaching.' 'What is that?' said the King. 'That I will subscribe my resolution,' said Mr Robert. 'Trust you it?' said the King. 'Yes, Sir,' said Mr Robert. 'If ye trust it, why may ye not preach it?' said the King. 'I shall tell you, Sir,' said Mr Robert; 'I give it but a doubtful trust; for I learn this out of Bernard, "in doubtful things, to give undoubted trust, is temeritie; and in undoubted things, to give a doubtful trust, is infirmity!"' 'But this is undoubted,' said the King. 'Then bear with my infirmity!' said Mr Robert. 'But ye say it is more than preaching?' said the King. 'Sir, I ought to preach nothing but the word of God,' said Mr Robert. 'Obedience to Princes, suppose they were wicked, is the word of God,' said the King. 'I durst lay a waiver, there is no express word of King James the Sixth, in the Scripture.' 'Yes,' said Mr Robert, 'if there be a King there, there is word for you also.' 'The whole Kirk has done it already,' said the King; 'ye must not be singular!' 'Sundrie have not done it,' said Mr Robert. 'Shew me one!' said the King.

¹ The Answers are general and evasive; and as the substance is contained in the following most remarkable CONFERENCE with the King, at Brechin, it seems only necessary to refer the curious to *Calderwood's Church History*, MS. Vol. V. p. 598, &c. ² The Chamber. A common mode of expression at this time. ³ Occasion, necessity.

⁴ Lat. *admirare*, marvelled; or wondered at.

Apr. 1602. 'Your Ma. must bear with me,' said Mr Robert; 'for it were against the rule of Charitie to harme my brethren.' He defyred the King to convene the Ministrie, to see what they would injoyne him to doe. 'That needeth not,' said the King; 'none darr or will refuse but yee; and therefore yee are the sole and only ground of my slander.' Mr Robert, to clear him of this imputation, said, 'I have offered to subscribe my Resolution, in what language your Ma. pleaseth; which none have done but I.' 'Where is your Resolution?' said the King. 'I sent it in write to your Ma.,' said Mr Robert. 'That which yee sent was too generall,' said the King; 'but what fault find yee in my Articles?' 'I cannot remember all; but one thing I remember,' said Mr Robert, 'yee would have me to resolve according to your book; and who can doe that?' 'There is never a false word in that book,' said the King. 'Yes, Sir, there are findrie.' 'Weill then,' said the King, 'wee fall putt out that claus out of the Articles. What other fault find yee?' 'I cannot remember now,' said Mr Robert. 'Have yee not the Articles?' said the King. 'I gave them to Sir Patrick Murray,' said Mr Robert. 'I am sure,' said the King, 'yee have kept the Copie.' Mr Robert, perceiving the King's drift, to urge him farther, thought it not expedient to produce the copie. 'Weill,' said the King, 'stay heer till Sir Patrick Murrey come.' Yet, after supper, Mr Robert gott licence to returne home, till the next advertifment.

Sundrie other things past between the King and him, in conference; as namelie, Mr Robert defyred, that he 'and others of the Ministrie be not urged to hurt thair consciences; and that his Ma. would not think, that honest men would sell their soules; howbeit their bodies and geir fall be at his command.' 'I understand not what ye mean,' said the King, 'be selling of your soules; but I fall gar the best of you say and gaine say!' 'That may be, Sir,' said Mr Robert, 'and that yitt they say not against conscience.' 'Yee fall not find the like in me,' said the King; 'my saying fall be alwise one.' 'It setteth not to compare with your Ma.,' said Mr Robert.—He prayed in heart, all the time, thus—'O Lord! keep my heart unto thee! and save me from the danger that this traitourous and false heart is like to cast me unto!'

(10.) THE THIRD CONFERENCE of MR ROBERT BRUCE *with* THE KING.

MR ROBERT BRUCE, after his Conference with the King at Brechine, was confined in the parioch where he had his dwelling place, and suffered to preach noe where ells. He received a Letter from the King, to come to him, to Perth, the 24 of June. When he come and entered in the King's chamber, no other was suffered to enter but Sir Patrick Murrey. The King asked, 'Where the Articles were?' Mr Robert answered, that he had redelivered them to Sir Patrick Murrey. Sir Patrick produced them. After they were read, the King asked, 'If he was willing to preach according to these Articles?' 'Not, Sir,' said Mr Robert, 'if it please you?' 'Why?' sayis the King. 'Because my preaching is the mater of my Instrucones and Commiffion: No Prince hath the pouer to give instructions to another Princes Ambassader. I am the sone of God's Ambassader and preacher!' 'But,' said Mr David Lindsey,¹ 'yee offered to preach to that effect, before yee went out of the country.' Whereupon, Sir Patrick produced Mr Robert's Letter; which was read, in the audience of the King and Commiffioneris. 'Weill,' sayes Mr Robert, 'yee refused this offer, soe am I not bound to it.' 'Will yee goe from the thing yee have offered?' say they. 'Weill,' sayeth Mr Robert, 'will this Letter satisfie yow? Sall I be noe farther urged, in case we condescend to this Letter?' 'Nay,' quoth the King, 'yee may say all this and not be resolved! Say truely, was yee resolved at that tyme or no?' 'Not indeid,' said Mr Robert. 'How say yee then, that yee will give thanks for my deliverance, that day?' said the King. 'Yes, Sir,' said Mr Robert, 'I have cause to give thanks for your preservatione, suppose yee had cast your self in danger.' 'I told yow that,' quoth the King; 'yee see what he meant.'

¹ He was Minister of Leith, and preached the Oration before the King the day of his landing after the Conspiracy.

—Are yee now resolved? 'Yes, Sir,' said he. 'That's but the duty of a subject, when yee have done,' said the King. 'Are yee resolved to preach?' 'I am discharged to preach the pleasures of men,' said Mr Robert: 'Place me where God placed me,¹ and I shall teach fruitful doctrine, as God shall give me grace: But we have not that custome to be enjoined to preach; nor I dare not promise to keep that injunction. It lyeth not in my hand to make a promise; I know not certainly what God will suffer me to speak; I may stand dumb. Therefore, Sir, leave me free; and when I shall find myself to be moved, be God's spirite, and to have the warrant of his word, I shall not fail to do it.' 'That is plaine Annabaptistry! That is a caball and tradition,' said the King: 'Yee shall preach as the rest have done, or else I cannot be satisfied. Yee shall goe!' 'I pray your Ma.,' said Mr R. 'sett down your disjunctive, and the one, God willing, shall be as welcome to me as the other. I have racked certainly a peace of my heart, to please your Ma.; now seeing your Ma. cannot be satisfied, except I make shipwrack of all, lett me goe, in God's name. Suppose I have some commodities, as other mean gentlemen have, in your Ma's countrie, yett, Sir, I never desired to have seen your Ma's face, or your countrie either, except I had been certainly informed that your Ma. was satisfied!' 'What warrant had yee? Who informed yow foe?' said the King. 'If it please yow, Sir,' said Mr Robert, 'I had first a warrant from the mouth of both your ambassaders, who assured me their satisfaction should be yours.' 'I trust,' sayeth the King, 'they will not say, suppose of all this new kindnesse that is knitt up betwixt yow.' 'Surelie, Sir,' said Mr Robert, 'I am perswaded they will say it, and heer is a brother, (meaning Mr Patrick Simfone,) that has heard my Lord of Marr say as much. Beside this, if it please yow, Sir, I have your Ma's own warrant, be Letter.' 'What!' sayeth the King, 'my Letter?' 'Your Ma's Letter,' sayeth Mr Robert, 'willeth me to send in my resolution, in write; and therupon, promised to be satisfied. And soe I did; and therefore, I ought not to be urged any farther.' 'My Letter beareth noe such thing,' sayeth the King. 'If it bear not, Sir, it shall turn to my own paines,' said Mr Robert. 'I have it beside me.' The King went in to his Cabinet, and walked up and down a reasonable space. In the mean tyme, the Commissioners dealt with Mr Robert, almost each one after another. He would have gladly gone out of the house, but the door was locked; soe he behoved to stand, till the King come out of the Cabinet. At last, the King cometh out. The Commissioners say to him, 'Sir, seeing it is soe, that Mr Robert alledgeth such promises, yee shall leave the preaching free to his own will: But let us come to his subscription in the rowme therof.' 'Are yee content,' sayes Mr David and the rest, 'to subscribe the King's innocencie and their guiltinesse?' 'Not in these terms,' answered Mr Robert. The King urgeth him the more earnestly, and sayeth, 'I will not only have yow cleering mee, but my whole company.' 'As for your Ma's company,' sayes Mr Robert, 'they have no need of my cleering; rather will they seek it. I am bound to your Ma., and I will doe all that lyeth in my possibility.' 'Then yee must subscribe my innocencie,' said the King. 'Your own conscience, Sir, can doe that best,' said Mr Robert. 'It is very hard for me to do it!' 'Why is it hard?' said the King. Laith² was Mr Robert to answer, least he should irritate him; but he insisted. Then said Mr R. 'Your Ma. will not be offended if I speak freely?' 'Not,' said the King. 'I was reading,' said Mr Robert, 'upon Ammandus Polanus, touching the slaughter of the Magicians, when the King of Babell commanded to slay. Ammandus disputeth the question, whether the King of Babell did weill or not? First, he sayeth, *animi gratia*, it would appear that he did weill; for he had the plaine law of God for him, in manie places: Yett he concluds against the King, that he did not weill; ffor, howsoever he had the Law, yett he looked not to the Law nor had regard to God nor his glory: Therefore sayeth he, howsoever the Magistrat hath the sword and may most justly execute, yett if he have nothing but his own particular³ before his eyes, God nor his glory, he is a Murtherer!—Now, Sir, I pray, what can I or any man say, what your Ma. had before your eyes? Or what particular yee had?' 'It is true,' sayeth the King, 'and therefore I will give yow leave to

¹ Restore me to my pulpit.² Loth, unwilling,³ Quarrel, offence, or cause.

Jun. 1602. pose me upon the particulars.¹ 'Then, first, it please yow,' said Mr Robert, 'Had yee a purpose to slay MY LORD?' 'As I fall answer to God,' sayeth the King, 'I knew not that my Lord was slaine till I saw him in his last agonie; and was very forie, yea prayed in my heart for the same.' 'What say yee then concerning MR ALEXANDER?' said Mr Robert. 'I grant,' said the King, 'I am art and part of Mr Alexander's slaughter; for it was in my own defence.' 'Why brought yee him not to justice,' said Mr Robert, 'seeing yee would have had God before your eyes?' 'I had neither God nor the Devil, man, before my eyes,'² said the King, 'but my own defence!' Heer the King beganne to fret. He took all these points 'upon his salvation and damnation,' and that he 'was once minded to have spared Mr Alexander; but being moved, for the time, the motion prevailed.'³ Farther, Mr Robert demanded of the King, 'If he had a purpose, that day, in the morning, to slay Mr Alexander?' The King answered, 'upon his salvation, that day in the morning he loved him as his brother!' Mr Robert, be reason of his oathes, thought him innocent of any purpose that day, in the morning, to slay them: Yett, because he confessed he had not God nor justice before his eyes, but was in a heat and mind unto wrong, he could not be innocent, before God; and had great cause to repent, and to crave mercie for Christs sake!

In end, Mr Robert yielded to subscribe his resolution, according to the Act of Parliament; which he did, Partly because, in his judgment, it was the duty of a subject to reverence the lawes of the Country, except he knew them, certainly, to be contrarie to the word of God: Nixt, he was bound to free himself of that imputation which was layed to his charge, partly be the King himself, partly by others, directed to him from the King, that 'come death, come life to him, come what would come of him, the whole blame sould lie upon him, in respect he was the author of the slander!' Thirdly, because he made a faithfull promise to him, that 'noe more sould be craved of him.' Soe, upon these three respects, he gave his resolution, in write; not that he was perswaded, in his conscience, for any thing that he could learn, be himself, or from Gods Spirit, after prayer, as he himself recordeth in the Historie of these proceedings; but, in respect there was a strait and publick Law, he thought good to follow it, till God gave him farther light. All the Commissioners, and Mr Patrick Simfone, who accompanied him, subscribed as witnesses. Wherupon Warrant was granted to him to travell abroad in the countrie; provided he come not neer Edinburgh, be four milles.

Nov. 1602. (11.) MR ROBERT BRUCE drew neer to Edinburgh, in tyme of the Assemblie. *George Heriot* and *John Robertfone*, Commissioners for the Town of Edinburgh, made mention of his reposition;⁴ wherunto the Assemblie applauded. But the King and the Moderator⁵ alledged they had fundrie things to proponne, before that were granted. The King desyred to have the Interlocutor of the Assemblie, 'whither Mr Robert sould be enjoined to utter in pulpit, that which he had offered in his bill before his banishment, and the resolution which he had subscribed at Perth, after his returne, or not?' Mr John Hall⁶ being first asked, answered, 'Ther could be nothing done in that mater, whill⁷ the parties were first heard.' Soe it was thought meet that Mr Robert sould be sent for: But the mater was delayed till the end of the Assemblie; and howbeit he was nather called nor heard, they voted that he sould publish in pulpit his bill and resolution.⁸

¹ Grounds of quarrel or grudge. ² That is, in the heat of the struggle and the deadly encounter in which he was engaged, he had no leisure for reflection, but looked only for the means of ridding himself of his antagonist. ³ On cool reflection, and at that distance of time, the King is inclined to think it might have been in his power to have saved Mr Alexander's life. But this he admits, after being in the knowledge of all the facts and incidents, which he could not at the time have contemplated. Had he attempted to have taken him alive, in all human probability, it would have cost his own life and that of his party: for Gowrie, as Provost of Perth, and adored by the citizens, could have in an instant overpowered the handful of followers attending upon the King, in this hasty and unprepared visit. ⁴ The fact of his being reponed or reinstated. ⁵ Mr Patrick Galloway. ⁶ The Moderator of the former Assembly. ⁷ Until. ⁸ It is unnecessary to pursue this matter farther. The Editor hopes that Wodrow's Life of this remarkable person, together with the Lives of other eminent public characters, written by Wodrow, shall soon be published. The publication of these Lives would prove a valuable accession to the History of Scotland, and could hardly fail amply to repay the person who undertook such a task.

(12.) LETTER, *the Laird of Beltries* (*Sir James Sempill*¹) to *Mr Robert Bruce*. Nov. 1602.

SIR,

I INQUIRED of his Ma. yesternight, if he had any new intention anent yow? He answered, none, but that yee fould enter and doe your duetie, as was told yow of before. His Ma. alledges, yee never bide long at one resolution; ffor, after my excuseing yow of your not abilitie for preaching the laft Sabbath, as yee willed me to doe, yett he fent Mr Henry Blyth to the Moderator, to enquire if yee fould teach? This I was ignorant of; but yett I answered, that it was upon a fear that poffeffed yow, of a new offence, in not teaching; and foe that was done for the full affurance of his Ma^s minde in it. To the purpofe, Sir, yee fall enter, if yee pleafe, on Sunday next, and advertife his Ma. two or three dayes before; inquireing, if he pleafe to fpeak with yow? At your entry, yee muft doe (as his Ma. fpeeche is) the duety of a good fubieft and of a good paftor; not to fay, fimply, yee are refolved, which yee have done already; but yee muft indeavour to remove all fcrouple from the auditor; as weill in cleiring his Ma^s innocencie, as of your guiltineffe. Thefe are his Ma^s own words: And my poor advice is, to fatisfie his Ma.; feing, (with manie) I think it may and would be done, being a thing able to do good to the King and whole Common-weall, to knitte the hearts of his people to him, by removeing fcrouples, if any be, or by confirming them in the concewed truth; which, be your filence in this mater, will be called againe in queftion be them. The Lord give yow that resolution which may beft ferve for his glory. HALYRUDHOUS, this Tuifday the laft of Nov^r 1602. Keep this ticket for both our warrants.

(13.) MR ROBERT BRUCE'S ANSWER to *Beltries' laft Letter*.

SIR,

I WAS upon my journey homeward, when I received your laft Letter; and hearing that yee were Dec. 1602. gone in the country, I delayed any anfwer till your returneing. Therefore, now, Sir, for anfwer; firft, I fay, that if Mr Henry Blyth had any fuch commiffion of me, or if the honeft man will fay foe in my name, I will be content to take that imputation upon me: but otherwife, as it is true indeed, I received wrong, I am noe wayes ambitious of it. For I have been twice thruft into it, and as oft out of it; and I have noe will that his Ma. be compelled to ufe his Royall office upon the remanent of my frail life. For thefe four or five yeares bygane, I have been continually under a lingering and dwyning death, which I am affured has been more troublefome and tedious to me, both in body and minde, then that hour of death fall be, when euer it fall pleafe the Lord to call me therto. I have not forgott thefe voices, that oftentimes I woudered to hear, 'that his Ma. dreadeth us bodily harme.' Thefe things maketh me to look or I leap, and to advife weill or I enter; yett I fpeak nott this, as if I were minded to fhake off my duety that I ought to my flock: But if it would pleafe his Ma. to fuffer us to ftand in that liberty wherein the Lord hes placed us, and to fpeak in the chair of truth, as the word and fpirit of truth fould direct us, I would promife, be God's grace, when ever the word fould give us occafloun, as oft tymes it will, that then, from the authority of the word, I fall repreffe all finifter conftuctions of his Ma. actions, and by the authority thereof, beat down all feditious and infolent humors of fubiefts, that would preffe to ufurp upon your fuperiours; and foe, from the word, as moved therby to fpeak upon thefe matters; which muft have a farr greater grace nor² to fpeak be way of injunctions, or fpeak as it were a cunned leffoun,³ or ane A B C putt in man's hand. The one deuty fmelleth of Divine Theologie, the other of Court Theologie, and does noe good to the caufe, but hurts greatly: And as God liketh of a cheerfull giver, foe when the people feeth thefe things to come freely, of my felf, without constraint, nor yett putt unto my head, they will reverence them the

¹ He was son of John Sempill of Beltries, whose conviction for Treason is recorded in vol. i. p. 72. Sir James was Ambassador to England 1599, &c. and was author of a Satire, 'The Packman and the Priest.' His son Robert Sempill was author of the well-known Elegy on 'Habbie Simson the Piper of Kilbarchan.'

² Than.
³ Conned lesson, got by rote.

Dec. 1602. more, and have the greater weight with them. Soe to be short, if this sort of service may be acceptable to the Prince, I am at command; if otherwise, I will hold me with the benefite that I have gotten, within the compafs of obedience; and be God's grace, fall be unreproueable of any. Having noe farther for the present, I rest, &c.¹

(14.) LETTER, *Mr John Hall to Mr Robert Bruce.*

SIR,

Jan. 1603. JAMES AIKINHEID, bailiffe, gave intelligence to his Ma. that yee were purposed to preach this next Sabbath, God willing; and I being down in the Abbey, his Ma. gave me this answer, and ordained me to signifie the same unto yow: That is, because your advertisement was generall, and thereby he could not understand what yee was to doe in the matter, wherein he has been offended; also, he would assure yow, that if yee entered into the pulpit, and did not according to the Act of the Assembly, it would be a matter of great irritation: Therefore, be your tickett, ye would certifie againe that ye are ready to preache, and to satisfie his Ma. according to the Act of the Assembly; or otherwise it will not be heard as a sufficient offer. Sir, if yee write heeranent to mee againe, I fall be ready to deliver it, and shew yow the event.²

Your brother in Christ,

MR JOHN HALL.

(15.) MR ROBERT BRUCE'S LAST CONFERENCE *with THE KING, on Tuesday the fifth day of April, 1603.*

Apr. 1603. MEN of all qualities resorted to Edinburgh, to congratulate the King his preferment.³ Motion was made, be some brethren of the Presbytery of Edinburgh, that Mr Robert Bruce should be defyred to come East to congratulat with the rest; for the King took it evill in part, as was reported, that he should be the last in giving signification of his humble affection. Upon Saturday, the 2 of Aprile, Mr Robert returned answer, that 'in respect of his Ma's last Conference, holdin with the Commissioners, he durst not take the boldnesse to draw neer to his Ma.;' alwise,⁴ did signifie the sinceritie of his inward affections, to the Lady Marr and some other noble women, who could bear witnesse of his integritie in that point: But, seeing he was informed that his Ma. would accept the offer of his affection, he should come with diligence, to try what might be done.

Soe, upon Mounday, the 4 of Aprile, he come to Edinburgh and founded some stable men, his freinds, touching the King's disposition, whither he was willing to accept of him and his congratulation. Soe farr as he could learne, he was not able to redeem his countenance and favour, but with confession of a fault, and that upon his knees; be which meanes he might eschew publication in the pulpit, and recover his Ma's favour also. Mr Robert findeth himself brought in as great a strait almost as ever he was; and answered to the Lords that interceded for him, that 'seeing he could not purchase his Ma's prefence but upon these hard conditions, his earnest desyre was, that they would make his excuse, in all humility, to his Ma. and to shew that notwithstanding he came to the town to congratulat, the preasse and throng of the people was soe great, because his Ma. was upon the point of his departure, that he could get noe access.' They take much in hand;⁵ but the King, understanding he was come to town, sent one of his domestick servants, James Murray of Powmais, the day following, Tuifday the 5 of Aprile, soon in the morning, before his Ma's departure, for him, before he was risen out of his bed. Mr Robert thought it hard, and that the King caught that peace of disgrace to his Ministry.

¹ (1602. Jan. 19.)—Mr Robert Bruce addressed a Letter to the Town-Council of Edinburgh, which is an echo of that to the Laird of Beltries. This was followed by *George Heriot* and *Cornelius Inglis* waiting on the King, on Bruce's part; who inhibited any preaching; whereupon he left the town. On 27th January, he intimated his design to preach next Sabbath, to James Aikenhead, one of the Bailies of Edinburgh. ² Much correspondence, &c. took place, till at last the Commissioners of the General Assembly, Feb. 25, 1603, 'declared that his re-entrie to the Ministrie of Edinburgh came through his own default.' ³ To the English Crown. The King departed for England immediately after this Conference took place. ⁴ Nevertheless. ⁵ Undertook; promised largely:

Alwise he went down to the Abbey. The King was at his breakfast. Mr Robert sought occasion Apr. 1603. of speech with him, at that tyme; thinking, that in the prefence of many strangers and noble men, the King would not urge him, as he did before. The noble men courteously gave him place. But when he was upon the point of bowing and entering in conference, Sir Patrick Murray, who stood upon his Ma^s left hand, and rounded somewhat in his ear, prevented him. He was referred to the King's bed-chamber, to be heard after the preaching; which was very cold. It was made be Mr Andrew Lamb. Mr Robert, all the tyme, prayed to God to direct him be his Spirit, in the end; as he had done in the rest of that action before. He resolved noe wayes to goe to the knees, against his conscience; but rather now, in the entry to this great Monarche, to urge his Ma. with a thankfull heart to God for his wonderfull and unlooked-fore blessing. He had all the words and mater conceived, which he communicated to Mr James Melvill, Minister at Anstruther, who was weill pleased both with the mater and the maner; wherby Mr Robert was greatly encouraged to persist in his resolution. In the meantyme, the Lord Fleming cometh for Mr Robert, and taketh him to the King's bed-chamber; where he found my Lord of Marr, my Lord of Blantyre, the Laird of Dunipace, Mr Peter Hewat, Mr Thomas Abernethie. The Lord Fleming went to the Chamber of Prefence, told the King Mr Robert was in the place appointed. The King ncontinent withdraweth himself, goeth in to his bed-chamber, his boots on, ready to ryde. Soe soon as he drew neer, he walked in circle about the house,¹ as his custom was. Mr Robert casteth himself to meet him, with all reverence and humble inclination of his body that he could, without goeing to knee. The King heard him graciously, in outward appearance. The summe and effect of Mr Robert's words were this. 'Sir, I have marked four things in this great work, touching your Ma^s high advancement: first, that the God of heaven and earth has placed yow in all these earthly thrones, without the losse of the credite of your holy Religion and hurt of the inward peace of your own conscience: Next, that he hes placed without shedding a drop of your Ma^s blood, which is lesse nor² conscience: Thirdly, without the hazard of your Ma^s subjects purses, which is lesse nor blood: And last of all, that he hes soe wonderfullie directed the tongue of that worthy Lady and noble Queen, together with the affections of the whole Counsell, soe that if furth of your Ma^s own bowells, they could not have conspyred more effaldly³ to your Ma^s promotion. These things crave a twofold duety of your Ma.: First, that yee take heed to your own heart, that the glory and glance⁴ of these earthly things deceive you not; that ye make them not your reward, nor place the confort and consolation of your heart in them; but rather, as they are given, use them as steppes and degrees to stepp up to the Crown that cannot fade nor faile: Next, seeing the God of heaven hes manifested his unspeakable care, in preserving soe many Crowns and Kingdoms to yow, sir, your Ma. cannot eschew the note of ingratitude, if yee extend not your Ma^s credit, and imploy your whole care, for preservation of his own kingdome.' THE KING answered, 'Mr Robert, be God's grace I fall not place my confort or consolation in them, or in any earthly thing: As for the preservation of the kingdome, if I would preserve my own life, I must study to preserve it; for we have common freinds and commone enemies: The Papists that shutt⁵ at that kingdom, shutt at my life also, as I know certainly.⁶ As touching this wonderfull mercy of God, Mr Robert, if yee be remembered I oft tymes foretold you, that God would bring this work about, after this fort;' and named some places to him. But Mr Robert could not remember.

Mr Robert took his leave; and had as good a countenance of the King, as ever he had in his life, in his own judgement. The King did not urge him with any such thing as the Lords gave out; nor made mention of any thing, tending to that purpose. Ather the mediators were unfaithful, or God putt it clean out of his heart. When the King mounted on horfback, Mr Robert went to him againe,

¹ A mode of expression for chamber.

² Than.

³ Truly, sincerely; from 'afauld,' literally one-fold.

⁴ Dazzle, splendour, glitter; literally the reflection thrown from a mirror by the sun.

⁵ Shoot, aim at.

⁶ In allusion to the numerous Conspiracies which had been devised by the Papists against his person.

Apr. 1603. to take his leave ; and was as weill received as any subject, of his calling, in Scotland. Those that stood by heard the King say, ' Now all particulars¹ are past betwixt yow and me, Mr Robert.' But Mr Robert himself could not remember that he heard these words.

(16.) *NOTES from Calderwood's Church History, MS.*

Feb. 1605. (1.) MR ROBERT BRUCE, the year of the King's departure out of the country, gott peace and rest ; but the year following he was threatned of new, for the mater of GOWRY, to be deprived of life, living and stipend. He was very farr cast down. Whill he was ryding to Stirlie to fetch the Erle of Caithness to his house, it pleased the Lord that night to give him a comfortable vision in his sleep. He recommended his case to God, and so fell asleep. He saw great difficulties presented to him, and it behoved him either to passe through them, or to die by the way. At the last, he resolved, in God's obedience, to hazard ; and whill he was passing through, he feileth a motion in his heart, moveing him to say, in and through Michael, the Captaine of the Lord of hosts, ' I fall prevaill, O Michael ! Michael ! Who is like the strong God !' Mr Robert was greatly comforted with this ; and putt it in write when he awaked.

This year the Commissioners of the Generall Assembly directed Summons, warning him to compare at Edinburgh, the 27 of Februar, to hear and see himself removed from his function, in Edinburgh. He compeared before them, and took Mr Thomas Gray with him. But none gott access to him. After long reasoning, they removed him. He appealed from their sentence. They inhibited him to preach thereafter. He obeyed not. The Laird of Lowrestoun, Commissioner, had Commission to see the sentence of Removall pronounced against him.

Jul. 1605. (2.) CHANCELLOR SETON sent for Mr Robert Bruce, advertised him that he had gotten command from the King to discharge him from teaching, &c.

Aug. 1607. (3.) THE fifth of August was solemnlie kept in Edinburgh. The Kings skoll was drunken by the Duke, his Commissioner, and some other noblemen at the crosse of Edinburgh, which was covered, for the greater solemnitie. Bacchus was sett up, and much wine drunken and sweete meats cast abroad. Much vanitie and pastime, beside ringing of bells, and getting on of bale-fires. The pest brake up soon after.

(17.) *LETTER, Mr Robert Bruce to the Laird of Beltrise (Sir James Sempill.)*

RIGHT HONOURABLE COUSINE,

Feb 1603. YE most give me leave to utter my friendly counsell against you. To what purpose should ye and Mr Ewart put me in esperance of my liberty, by your Letters ? Of yours I saw only one ; and I have four of Mr Peter's, assuring me of ane comfortable issue ; and, in truth, I gave such credit, and was so certainly perswaded by him, that I sent home my wife and children, and spoiled my self of all my outward comforts, and exposed my self to the extremitie of the season, in a cold lodging, in thir miserable and barbarous parts, that I have almost extinguished both my vitall and sensitive spirits. Why would ye not signifie his Ma's will plainly unto me, or to Mr Peter either ? His Ma. pleasure should have been a law to me. Yea, if his hienes would command me to the scaffold, I have a good conscience to obey him ; and it would be more welcome to me nor this lingering death that I am in. The time has been I have done his Ma. acceptable service, as his own hand writts besides me will beare record ; whilk I fall leave to my posterity as their rarest Jewells. I thank God, I was never within the compass of law ; and yett am war used nor either Papist or Atheist. Alwayes I crave noe more of you, but a Christian duty. As I prayed you in my last Letter, so will I now ; feed me not with compliments : The worst shall ay be welcome to me, be his grace who sustaines me wonderfully. I am a

¹ Quarrels, causes of offence.

man that hes tasted of many afflictiones, and I wote not who crosses me! But be it Papist or Atheist, Feb. 1613. Bishop or Minister, I will lay over all my vengeance where it belongs. As to my prayer, in the end of my last Letter to his Ma., I heare, be Mr Peter Ewart, that I was quarrellit, as if I had prayed for reconciliatione in that particular. Indeed, if it had been soe conceived, I might have been justly quarrelled. But the Lord knowes the contrary is most true. I had no more mind of that Treason, at that time, nor the bairne that is yett unborne. As to the rest of my faults yee make in my other Letters, they are but bairnly: For suppose I wrotte unto yow with my own subscribing hand, yet it is not worthie to present his Ma. I waill¹ the best hand that I can gett, and for the omiffione of my subscriptione, what marvell? Seeing I wrott not the body. And yet the writter therof constantly affirms that I subscrivit, whilkes makes me to think that ye have not receaved my closed Letter to his Ma., but the copie therof, which I directed to your selfe to be perused, and not to be presented, except ye knew it would not offend. I pray you, confine, if ye delight in my conversatione, lett the effect declare it. Lett me find the fruit therof; and if yee be not able, lett me be in no war case nor I am in, be your deid; for that were needlesse. Suppose ye have gotten new friends, men I grant that are more able to perfit you in your outward estate, yett I will looke that ye will observe a Christian duty towards me. So wishing yow well in the Lord, I take my leave, and rests

Your most loving confine to his power, in God,

INUERNESSE, the 10 of February 1613.

ROBERT BRUCE.

No. XIX.

COLLECTION OF ADDITIONAL ORIGINAL LETTERS AND MISCELLANEOUS DOCUMENTS ILLUSTRATIVE OF GOWRIE'S CONSPIRACY.

(1.) LETTER, *George Nicolson, Queen Elizabeth's Ambassador in Scotland, to Sir Robert Cecil, Secretary of State.*²

It may please your honor,

THIS daye morninge, at 9 howers at that tyde, the K.[ing] wrote to the Chancellor, Secretary, Aug. 1600. and others, and to some of the Kirk; and word came hither in this maner, and the L.[ord] Secretary told me, That yesterday th' Erle of Gowry sent the Mr his brother, Mr Alex^r Riven, to the K.[ing] hunting in Fawkland Parke; shewing the K.[ing] that where, for his adoies, he had muche troubles to git treasor, &c. his brother th' Erle had founde in an old towre, in his house at St Johnston's [Perth] a great treasor, to helpe the K.[ing's] turne; wth w^{ch}, he faide, his brother wolde faine have the K.[ing] to go to see quietly, that day. Whereon, after the K.[ing] had hunted a while, and taken a drink, he tooke freshe horse and discharged his company (to wit), the D.[uke] and Erle of Marr then in company wth him, taking onely a few wth him; yet the D.[uke] rode, and the Erle of Marr followed, and the K.[ing] met by the way the L.[ord] of Inchchaffray, who also rode wth him to St Johnston's; where the K.[ing] cominge, th' Erle meting him, caryed him into his house, and gave him a good dynner; and after went to dynner wth the D.[uke] and his company. The Mr, in the meane tyme of their dining, perswaded the K.[ing] to go wth him quietly to see it; as the K.[ing], discharginge his company to follow, went wth the Mr from staithe to staithe, and chamber to chamber, locking still the doors behinde him, untill he came to a chamber where a man was, w^{ch} the K.[ing] thought had ben the man had kept the treasor. There the Mr cleked hold on the K.[ing] and drew his dagger, fayinge he had killed his father, and he wolde kill him! The K.[ing], wth good wordes

¹ Select, choose.

² The Original is in the State Paper-Office, London.—See *Chalmers' Life of Ruddiman*, p. 443.

Aug. 1600. and meanes, fought to difwaide him; fayeing, he was younge when his father was executed, and dyvers others honest men; that he was innocent thereof; had restored his brother, and for amends, made him greater then he was; that if he killed him, he could not eschape, nor be his heir: That he presumed Mr Alexander had learned more divinity than to kill his Prince; assuring him, and faithfully promising him, that if he wold leave of his enterprice, he wold forgive him, and kepe it secret, as a matter attempted upon heate and rashness onely. That to these the Mr replied, what was he preaching? that should not helpe him; he should dye: And that therewith, he stroke at the K.[ing,] the K.[ing] and he bothe going to the ground, that the Mr called to the man there present to kill the K.[ing.] That the man answered, he had nether harte nor hand; and yet is a very curragious man. That the K.[ing] having no dagger, but in his hunting cloths wth his horne, yet defended himself from the Mr; and in strugling, got to the windowe, where he cryed Treason! w^{ch} Sr Tho^s Erskin, John Ramsay, and Doctor Harris, hearing, ran up after the K.[ing], but found the doors shut, as they could not passe; yet John Ramsay, knowing another way, got up and in to the K.[ing,] who cryed to John he was flaine; whereon John out wth his rapier and killed the Mr. In this tyme, that th' Erle should tell the Duke, Marr, and the rest, that the K.[ing] was gone away, out at a back gate; that they ran out and Gowry wth him, and missing him, that th' Erle saide, he wold go back and see where the K.[ing] was. That he, wth 8 wth him, wth a steele bonnett and two rapiers, ran up the staires; that John Ramsay, meting them wth drawn swordes, Sr Tho^s Erskin and Doctor Harris being then comed to John, after sondry strokes, in the end killed the Erle also; Sr Thomas being hurt, and Doctor Harris mutulate and wanting 2 fingers. That this stir being, the townes men and Gowrie's frends, in evil appearance, said, they wold have accompt where th' Erle was, or they wold pay the grene cotes! To pacifie w^{ch} the D.[uke] and Mar were sent to the Magistrates; and so quieted the matter, as the K.[ing] and his company gott away; the K.[ing] thanking God for his deliverance. And yesternight, knighted, as I heare, John Ramsay and Doctor Harris; but the Secretary told it not me.¹

Upon these, Lettres comed from the Courte, The whole Council here convened; and in end, at one of the clock rose, and came all to the market crosse, and there by sound of trumpett intimated, but in bref, the happie eschape of the K.[ing] and their Act, that they made in Council, for the people to thank God for it; and in joy thereof, to ring bells and build bone fires. Mr David Lindsay, standing with the Council on the Crosse, made a pithy and short Exhortation to the people, to prayse God for it; and therewth praied and praised God for the same; the whole Council on their knees on the Crosse, and whole people in the stretes, in like forte. The peces of the Castle also shotte in joy; the few bells yet ringing; the youthes of the towne gone out to skirmish for joye, and bone fires to be biled at night: And the Council to go, this tyde, over to the K.[ing,] for further deliberation in this matter. The K.[ing] at his retorne to Fawkland, presentlie cause thrust out of the house, from the Q.[ueen,] Gowrie's two sisters in cheif credyt wth the Quene; and swears to roote out that whole house and name. Upon the conveninge of the Council, the portes of the towne were shutt, for apprehending Gowrie's other brethren; and the lands are to be given to these new knights and others. This is the information and reporte comed yet hither, by the K.[ing's] command; w^{ch} some yet doubted to be fully so. What will follow, I remit to the sequell; being glad the K.[ing] is safe, without hurte. Gowrie's Secretary is taken, and matters hope to be discovered by him. Some false lyenge villains gave it out, I should have ben this day morne at Leith, by 3 of the clock, and should say, being asked by one, that I was there attending strange newes from beyond the water. I tolde the Secretarie of it, that it was false, as God be thanked it is; and that if I were charged by any such devilish devices, I wold refuse no debothed swinger or bloody villaine that should be so suborned to put doubt towards me; praying the Secretarie to remember it, and say it for me, if he hard it. That your honor sees how the malicious here spite me; in what danger I live, and how subject I am to all

¹ ' Mr James Hamilton is this day gone to England.'

accufation here; and some practifing knaves wold whifper it, that this plot fhould be drawne and Aug. 1600.
divifed in other parts, [England.¹] But thus much, for this tyme, in hafte, wth myne humble duty
and fervice. I pray God preferve yo^r hon^r. Edinburgh, the 6th of Auguft, 1600.

Yo^r honor's, &c. &c.

GEO. NICOLSON.²

I have no copie of this.

(2.) EXTRACTS *from* LETTER, *Sir Henry Neville to Mr Secretary Cecil*,³
Paris, 27th Feb. 1599—(1600.)

Right Honorable,

THE EARLE GOWRY, a nobleman of Scotland, who hath fpent fome time in thefe parts, is Feb. 1600.
purpofed to returne home through England; and defires to have the honor to kiffe her Majefties
hands, as he paffeth. And becaufe I know him well, and have had good communication with him,
and therein found him to be of very good judgement, and exceedingly well affected both to the
common caufe of Religion, and particularly to her Majeftie, and that which may concerne her honor
and fervice, I have thought good to recommend him efpecially, unto your honor; and to befeech you
to be a meanes, that he may receive that honour and favour that he is worthy of; that fo he may
depart, confirmed in that good devotion and refpect which he beares already towards her Majeftie.
If your honor pleafe to conferre with him about thefe alterations feared in Scotland, I beleeeve he will
give you good fatisfaction; and that you will finde him to be a man of whom there may be exceeding
good ufe made. I have given him my paffport, to ferve him till he come to her Majefties Court, in
as ample and favourable fort as I could. The reft I referre to your honor's good favour towards him;
whereunto I humbly recommend him. And fo, &c.

Your honor's very, &c.

HENRY NEVILLE.

THE Lord Hume purpofeth fhortly to returne likewise, as he telleth me, and hath already prayed
my paffport, which I cannot deny him. But you will be pleafed to have regard to fome of my for-
mer Letters.

(3.) EXTRACT *from* LETTER, *Sir Henry Neville to Mr Winwood*, London,
28th Aug. 1600.

Now to the occurrences of thefe parts, you fhall underftand, that the Erle Gowry, and a brother of Aug. 1600.
his, have been lately flayne, in Scotland, in the Erle's own houfe, and in the King's prefence. They
are charged to have confpired the King's death at that time, but God would not fuffer them. They
had prepared for it, to execute their deffeign, although they attempted it; and fo they fell into the
pitt themfelves had digged.

This is the relation fent hither of it; which, notwithstanding, is diversely censured, according to
men's divers affections. But howfoever, her Majeftie hath fent Sir Henry Bronkard thither, to con-
gratulate the King's efcape, and to doe fome other offices to him. There is alfo one Hambledown
come from thence, to refide here at leaft for fome tyme.

¹ This word is interlined. ² ' This must be allowed to be a very interesting letter; as it exhibits a striking
picture of that singular transaction, at the moment, and of the manners of the times. In it we see, that the King
had on a hunting-horn; that the King and his attendants wore *grene cotes*; and that the Earl of Gowrie's two sis-
ters lived in the palace, at the moment of the conspiracy, and were *in cheif credyt with the Quene*. The foregoing
dispatch of Nicolson proves very clearly, that Queen Elizabeth had *no finger in that pye*, particularly when Nicolson's
declarations are coupled with the subjoined Letter, from Lord Willoughby.' (No. 8.)—*Chalmers*. ³ In these
and the following Extracts, it has been deemed unnecessary to give any thing farther than what relates to the Con-
spiracy. The above Letters to Cecil and Winwood, have been taken from that valuable and authentic Collection,
Winwood's Memorials and Affairs of State, Vol. I. pp. 156, 249, and 274.

Nov. 1600. (4.) EXTRACT *from* LETTER, *Sir Henry Neville to Mr Winwood*, (in cipher,) London, 15th Nov. 1600.

OUT of 205 (Scotland) we hear there is no good agreement, but rather an open diffidence between 165 (Counsaill,) the King of Scots, and his wife; and many are of opinion that the discovery of some affection between her and the Earle Gowry's brother, (who was killed with him) was the truest cause and motive of all that Tragedy.

(5.) EXTRACTS *from* LETTERS, *Sir John Cary, (son of Lord Hunsdon,) Governor of Berwick, to Sir Robert Cecil.*¹

(i.)

Aug. 1600. (Aug. 10.)—THE KING has made great search, and lays great wait for the two younger brothers, who, by great fortune, escaped from the schools; and not daring to tarry in Scotland, they are this day come into Berwick closely, in disguised apparel; and being brought to me, they only desire, that their lives may be safe, and they may have a little oversight here, till the truth of their cause may be known: And the pitiful case of the old distressed good Countess hath made me, the willinglier, to give my consent, for their stay here a while; till I may, by your honourable means, know the Queen's Majesty's pleasure, whether they shall stay here, or go some whither farther into the country; for they only desire the safety of their lives; and the old Countess's case is pitiful and lamentable. I beseech your honour, let me know her Majesty's pleasure, with as much speed as may be; for that I would do nothing to offend her Majesty. The poor gentlemen stole into the town this morning closely, and I could not well turn them out again; seeing they come for refuge, to save their lives, till I know her Majesty's further pleasure therein.

(ii.)

(Aug. 24.)—UPON the receipt of your letter of the 16th August, according to the contents thereof, I did send for the tutor of the two gentlemen, the Earl of Gowrie's brothers; who, for my own part, I have not yet seen, since their coming into the town, so close have they kept themselves; as they have never yet stirred out of their chamber which they first entered into, to look abroad. I conferred with their tutor, which might be the surest way, for their own safety; advising them, for their better security, to go farther off from these bordering places, where the King might not so easily hear of them, and their being. I wished them to repair towards Richmond, or to Rippon, or to about Hull, or to some other such inland towns, out of the way, where the King might not so easily have intelligence of them; and so they to be freer from the danger of their countrymen, who are very conversant upon the street-ways. He liking very well hereof, yielded willingly thereto; desiring only, for that they came very meanly in, without either money, horse, or apparel, to have three or four days respite, that they might send to their friends for money and nags, and such other necessaries as should be fit for their journey; then will they presently depart, as secret as may be; and in the mean time, they shall remain very close, till their necessaries be gotten, which will be within four days.

(iii.)

Sept. 1600. (Sept. 4.)—BEFORE this day, I could not by any means get the present Earl of Gowrie and his brother out of the town; for that they had sent to their mother for maintenance, and could not hear till now any thing from her; and now it falls out so ill with them, as she hath sent them no manner of maintenance, hoping they should have staid here still; neither dares she trust many of her servants. For if it should be known, that she did, any manner of way, either give them succour or maintenance,

¹ These extracts were obtained by Lord Hailes from the Originals, in the Paper-Office, London. According to his plan, they are modernized.—*Cecil's Secret Corresp.* p. 161.

or any manner of help, she should presently forfeit, and be thrown out of all that she hath. Such Sept. 1600. secret search and privy spial is there through the whole country for her and her sons, as no friend either dare or can travel between them; such privy search is laid for them in all places, as almost no man can travel, in their country, but he is searched. And if I had sent them sooner away, I should but have sent them to very great danger, either of being killed or taken; for that they being very poor themselves, and having no friends, nor any acquaintance, could neither have told whither to have gone, or what to do. But, finding their necessities, and their willingness to submit themselves to any appointment, and for that I would have them out of the town, before any fault were found, I have found means, that they are furnished with some money, and are stolen privately out of the town. I have sent them, with a man of mine own, to Durham, where they shall be secretly for a twenty days, till their mother may take some better order for their maintenance; and then they mean to travel to Cambridge, and there to study for a time. They have none but themselves, and their schoolmaster with them. All the time of their being here, they were as in a prison; for nobody ever saw them, neither did they ever stir out of their chamber; so as there can be no certainty known of their being here, but only upon mistrust; and as secretly are they gone out of the town.

(iv.)

(Sept. 21.)—I HAVE even now presently received your letter of the 15th of this instant, understanding thereby the Queen's Majesty's pleasure for the Earl of Gowrie's two brothers. All that hath been said of them, touching their behaviour here in Berwick, is but surmises and supposes, by the contrary party. For I will assure your honour, upon my faith, it could not have been better carried, nor closer handled by any creatures living, than by them, during their being here. For myself did never see them but once, and that was at midnight, only myself; and for any other, I know they kept themselves close enough; for they durst do no otherwise, they were so afraid of themselves. They went away as secretly; and to Durham they went long since, with an intent to pass onward to Cambridge, as I did before signify to your honour. So as what is now become of them, I know not, neither where they be; for since their departure, I have not heard of them any thing; so as I know not where to hear of them. Thus much I thought good with speed to certify you; that with speed there may be some course taken for their dispatch, according to her Majesty's pleasure.

(6.) LETTER, *King James VI. to Mr John Caldcleuch.*¹

TRUSTY friend, We greit you hertlie weill. We have taiken occasioun heirby, richt ernestlie Aug. 1600. to will and desire you, that ye faill not, all excusis set a part, to be at Falkland, upoun Wedynsday at evin nixt, the twenty day of this instant, for your best advys and opinion to be had, anent the planting of Kirkis of Edinburgh; the forme and maner of the univerfall thankis and prayis that shall be gevin to God, in every Congregatioun and Kirk within this realme, for our miraculous delyverie of that treasonabill Conspiracy, intendit laitlie aganis us, at Sanct Johnstoun, be umquile Johne Erl of Gowrie, the Mr his brother, and thair associattis; and for your advys to be gevin in sic uther, our great and wechtie effairis, as false particularly impairtit to you at your coming: ffor the quilk, luiking precessly that nicht, that on the morne thaireftir, they materis may be handellit and put to ane point; We commit you in Godis protectioun. From Halyruidhous, this xiiij day of August, 1600.

JAMES R.

To our trusty friend, Mr Johne Caldcleuch, Minister of Newburgh.

¹ Wodrow's MSS. Advocates' Library, Vol. LXIX. Jac. V. l. 12. It is proper to mention, that this seems to be one of the numerous circulars which were addressed to the Clergy, as may be seen from the preceding Extracts from the Lord High Treasurer's Books, No. VIII. See Note, p. 239. No doubt each Letter would vary from another in some minute particulars, and according to the favour the respective parties enjoyed at Court.

Aug. 1600. (7.) EXTRACTS from LETTERS, *Rowland Whyte, Esquire*,¹ to *Sir Robert Sydney*.²

(i.)

(Aug. 16.)—THE King of Scots had lately like to have bene murthired. Young Goory³ (the Erle of Gooryes brother, whom the King restored to his honour and living, and bestowed on them both, great gifts and advancements) told the King in secrett, that in the Castell, which he kept vnder the King, he found a great chest buried, of that waight which cold not choofe but be treasure. He wold not presume to open yt, but in his Majesties prefence; and therefore besought him to take the paines to goe himself and see yt brooke open: Which the King did, leauing his traine below in a base-court, and went alone with young Goorey vp the stairs, and from chamber to chamber, which Goorey locked as he went, till he had brought the King where he had apointed. And then he told the King that the time was come which he had long wished for, to be revenged vpon him for his father's death: That he had traind him to that place to kill him, which instantly he wold doe; and drew out his dagger to haue stabd him. But the King catcht him by the hand, and defyred hym to heare hym speake. Then sayd, that when his father was put to death, he was but an infant; and therefore, cold not be accessory to his death. That during his Minority, many thinges were comitted, by the Regents of his Kingdom, which he was sorry for; which appeared by the great fauors he had bestowed vpon him and his brother. Bot all wold not serue; for he strugeld to stabb him; and the King, in defence of his liffe, shewed a great resolution and courage; which young Goorey perceuing, called to a seruant of his own, who was a partner in this Conspiracy; but he stoode still, and swore he had neither hand nor hart to kill his anointed King; and tooke part with the King, who had time then to put his head out of a window, and cryed 'Treason!' and called for speedy help! Then his traine went vp the staires, where they found the Earle Goorey, and some others, with weapons, to resist them; but they made way, with the death of the Earle of Goorey and his companions, and so rescued the King, and before his face flue the young Goorey.—LONDON, Saturday the 16 of August, 1600. By post.

(ii.)

(Aug. 26.)—HERE is one Hamelton come from the King of Scots, to reside here as his Agent, and to deliuer to the Queen the maner of the Conspiracie against his Master.—STRAND, (London,) this 26 of August, 1600.

(iii.)

Sept. 1600. (Sept. 12.)—ONE PRESTON, Capten of the King of Scots Foote-gard, a very proper and discret Gentleman, was with the Queen, sent from his Master, to deliuer more matter discovered of the Treason intended against his Maiestie by the Earle Gowrey and his Complices.—STRAND-BRIDGE, this Saturday, the 12 of Septemb. 1600.

(iv.)

Oct. 1600. (Oct. 3.)—SIR HARRY BRUNCKAR is returned out of Scotland; and from the Kings own mouth, receues the maner of the Conspiracy against hym; which is as yt is sett down in the printed booke I sent you the last week. The K. hath knighted all his servants that assisted hym out of that perrill. Some displeasure the King conceaues against the Ministers; for that they wold not, in the pulpitt, preach against the horiblenes of the fact.—STRAND, Friday night, late, the 3 of October, 1600.

¹ This gentleman was employed by Sir Robert Sydney to solicit his affairs at the Court of England, and to relate to him all that took place; for which he received a salary. His Letters are minute and valuable, as they contain much private information not elsewhere to be found.

² Lord Governor of Flushing, afterwards Lord Chamberlain to King James. He was brother of the celebrated Sir Philip Sydney. See *Sydney State Papers*, or Collins's Letters and Memorials of State, Lond. 1746. Folio. Vol. II. p. 211.

³ The Master of Gowry, Mr Alexander Ruthven.

(8.) LETTER, *Lord Gray*¹ to

Sept. 1600.

SIR,

I LANDIT that fame nicht I left you laft, at eight houris, and ves in danger amongft the craiges, and never in my lyf fo feik. Heir I met v^t Thomas Hendryfone of Edinb: He hes no newes, faue of Th' Earle of Gouryes death. He tellis it in the fame forte as ye haue hard it. Ther is execute M^r Th: Cranftoun and George Craigingelt, v^t fevin honest men of S^t Jhonftoun. They ar executed, for that they ver fund to be in armes befor the rest. His man, who ves v^t him, is bootit, M^r Villiam Rynd; and hes deponit no thing, faue that my Lord studiit Magik in Italie and France, and had fprittis. His chamberlane, vho fould haue flaine the King,² is yet keipit. M^r Patrik Gallouay hes preatchit all this in the pulpit of Edinb., bothe of the Magic and Treafoun; bot all vho ar dead, confeffit no thing. The King, efter the preatching, fueir folemnely, that all ves treu he hed preatchit, by his faluation and condemnation. The rest of the Ministers ves preaffit to fufcryue that it ves treu; bot they refusit: Yet they grantit to thank God for his Ma^{ties} delyuerance: And fo they ar banifit.

Richart Prestoun is at Loundoun; bot as yet I knou not vhat they fay to him. From Londoun ye fhall heir all. And I remaine your louing freind and coufing, GRAY.

DOVER, 28 Sept. 1600.

I forgot, amongft vther thingis that M^r Gallouay preatchit that Th' Earle of Goury ves a dealler betuene the Pope and the Kingis Ma^{tie}: Bot the rest of the Ministers vill not beleue him.

(9.) EXTRACT from LETTER, *Mr Winwood to Secretary Cecil*,³

Paris, May 17, 1601.

THE Ambaffador of Scotland hath been advertifed of a dangerous practice againft THE SCOTS May, 1601. KING: That lately, one called Glarnet hath been sent out of Scotland, with Letters to BOTHWELL, to hasten home with diligence, where he fhall find fufficient affiftance. The principal perfon who employed this perfon is THE QUEEN OF SCOTLAND; and Letters have been intercepted out of Scotland, from Mr Gray, that the death of GOWRIE fhould fhortly be revenged.⁴

(10.) EXTRACT from LETTER, *Lord Henry Howard (afterwards Earl of Northampton) to Edward Bruce, (Lord Kinlofs)*.⁵

[Without date, but previous to Aug. 24, 1602.]

OUT of the Archduke's Camp, one of her Majesty's greateft commanders heth been advertifed, that Aug. 1602? a fire will break out in Scotland, before it be long; which makes Cecil to fear, knowing in what ftate King James ftands with England at this day, that other trains, made under ground by fecret pioneers, within the body of that ftate itfelf, may break out when it is leaft looked for. Add hereunto, the gallant maintenance of Gowrie's fon,⁶ fo near Scotland, and with fo great fhews; though no man knows from whence, befide Sir John Cary,⁷ who is holden to be very inward in that courfe, as certain gen-

¹ From the original in the Advocate's Library. The envelope is lost, and no trace remains in any other Letters in the same valuable Collection. It does not appear whether this Letter is from Patrick, sixth Lord Gray, or his son, the well-known intriguing Patrick, Master of Gray, who acted so base and treacherous a part in England, during the latter part of the reign of Queen Elizabeth, and the earlier portion of King James VI. The families of Ruthven and Gray were nearly related by intermarriage. ² Andrew Henderson. ³ Winwood's *Memorials*, I. 326. See also Pinkerton's *Dissertation*, (appended to *Laing's Scotland*, (First Edit.) 1800, Vol. I. p. 534, &c.) who strongly asserts the Queen's participation in schemes against her husband. The inferences he draws from the alleged intrigues of Queen Anne are quite fanciful; and the hypothesis he then maintained, in regard to the Conspiracy, quite untenable. *Laing* discarded Pinkerton's *Dissertation* from the subsequent editions of his History.

⁴ See Notice prefixed to the case of Francis Mowbray, Jan. 31, 1603, &c. ⁵ From *Cecil's Secret Correspondence with King James VI*, edited by Lord Hailes; who has purposely modernized the style. Cecil employed Howard, and the King Bruce, as the medium of correspondence. ⁶ Patrick Ruthven, the son of William Earl of Gowrie, whose daughter, as has been remarked before, was married to Sir Anth. Vandyke. It was he who wrote the admirable Letter to the Earl of Northumberland, published in the *Cabala*, (*Scrinia Sacra*, 4to. Lond. 1654, p. 106.) which shews talents of no ordinary description. ⁷ See Extracts of his Letters to Cecil, (5.) p. 316.

Aug. 1602? tlemen in the North, making several collections of tokens visible, and words let fall, have advertised their own conceits, in consequence, with those other fears which have been formerly advertised.

The Master of Gray hath had long conference with Queen Anne; since which time his style is heaved up *cothurno altiore*, as Cicero said of Anthony. Divers of Gowrie's nearest and dearest friends have secret access to persons of great quality.¹ They keep old issues open, and feed spleen against all those that are employed and trusted in the courses of the present state; which the King's wisdom tempereth.

(11.) LETTER, *Lord Willoughby, Queen Elizabeth's Governor of Berwick, to Sir Robert Cecil.*²

SIR,

Oct. 1600. I RECEIVED your packet to Mr Hudson, the 18th of this month; and another to Mr Ralph Gray, this morning; both which I have dispatched accordingly, but such is the negligence of the posts, that the packets are 7 or 8 dayes in coming. For occurens y^t is uncertain, whether the convention hold; but the King is resolved to have bishops: The Marquis of Huntley have reconciled the King and Queen. The Erle of Mar is retired to Stirling; who hath very dishonorably suggested [to] the King, that I was privy to the practice of the Earl of Gourey: his reason to induce him to believe y^t was, because I gave the said Earle kind entertainment, at his being at London. Other newes hear is none, but that the contry is in very good quiet; which course I will endeavour to continue in the town, to my utmost. But such are the contentions of the Council heer, that unless Sr Will. Bowes had carried himself very discreetly, and I myself presently prevented y^t, they had quarrelled in my bed-chamber, being at Council. Thus, not willing to trouble you any further, I rest

Yours faithfully assured to doe you service,

Berwick, this 21 October 1600.

P. WYLLOUGHBY.

(12.) LETTER, *Sir James Coluill of East Wemyss to Sir Edward Bruce, Lord Kinlofs.*³

COUSING,

Jan. 1603. AFTER my hartly commendation, I culd not omit thir feu lynis, that 3e may knaw of my prosperus ariuel to this toun; desyring 3ou to haue my maist humble seruice recommendit to his hines. It greifis me mekil, in my passing throuche England, the los he hes, for the laik of sum (resident⁴) honest man, in quhom hartlie his M. might confyd; and sik as interly low him, nicht assur them selfis. For, to be plain, I dout vtheris, for causis I vil not vret. I pray the Lord grant him that grace, that he may fauour them quha lous him aboue al. I dout not bot, or now, 3e haue resautit my Letter from London, desyring earnestly to knaw the successe of that maiter aganis his M. I hoip, vithe the grace of God, to discouer mair in that, nor his M. hes 3it hard; as also, in findrie vther practises aganis him, at my first cumming. . . . I man 3it earnestly request 3ou to remember my couising Capitane Coluill to his M., quha hes losit al his esperance, for his M. seruice; and hopis he shal shortly gif better prouf nor he has 3it doon. I wret to 3ow afor, tuichin Mester David Foulis. Let him mak

¹ It appears, from the Letters of Nicolson to Cecil, preserved in the Paper Office, that Beatrix Ruthven, sister of Gowrie, was privately admitted into the presence of Queen Anne of Denmark.—*Hailes*.
Original is in the State Paper-Office, London.

² The Original, preserved in the Advocates' Library, Edin. (Denmylne Collections, A. 1. 34.) Colvill was then serving with reputation in the armies of Henry IV. of France. He was created Lord Colvill of Culross, Apr. 25, 1604. It is proper to mention, that his first wife was *Isobel Ruthven*, second daughter of Patrick Lord Ruthven, and sister of William, first Earl of Gowrie. His second wife, Helen Shaw, was widow of Robert Mowbray younger of Barnbogle. This connexion with the family of Gowrie, may account for the reliance placed in his information; but no farther trace is to be found of the matter, in any collection to which the Editor has had access. In an interleaved copy of Lord Cromarty's account of the Conspiracy, *Lord Hailes* remarks, 'there was another Colvill at Paris, then a spie of E. Essex (perhaps his 'cousing Capitan Coluile.)' Earl Bothwell was also then in France.

⁴ Interlined.

3ou priué to the maiter, for the man is content, and desyris only the furtie of convoy. Al vther Jan. 1603.
thingis, to neu occation; and my hartly commendationis to 3our brother: Praying 3ou, that this may
serue 3ou and Sir Thomas Erskyne, I remain 3our maist loving coufing,

FROM CALYS, our first of Januar (1603¹).

JAMES COLUILL of Eft Weimes.

THER vas neuer so mayny passageris heir a vay.² I pray the Lord it be for gud: Bot hes M. hes
gret caus to luik to him self.

To my Lord, MY LORD OF KINLOS.

(12.) LETTER, *Andro Hendersoun of Latoun, Chamberlain of Scone, to King James VI, informing his Majesty of certain conduct of David Lord Scone, &c.*³

MAIST nobill, gratiuous, hie, renownit, deir Sowerane,

and my onlie confort wnder God,

IT WILL pleis 3owr Maieftie, (albeit ower bauld) all kynd of dewtie commandis me to wifite 3owr Jul. 1608.
Maieftie with thir few lynnys, fen I hawe owermekill mater for me. It will pleis 3owr Maieftie to
caufe stay pe passing of the executioun of Scone,⁴ that it pass nocht conforme to 3owr Maiefteis last
Gift: ffor, S^r, I protest affor⁵ God, sic as is prowtydit pairto mereitis nocht at 3owr Maiefteis hand:⁶
And, S^r, fen I hawe thair awin hand wret, for my Warrant, I can do na less nor mak 3owr Maieftie
frequent thairwith, quhilk 3owr Maieftie fall fie, or ellis lat me nocht hawe that grace to fie 3owr Ma-
iefteis face. S^r, thay hawe gevin 3owr Maieftie ane werie improper style, saying in pair Letter, di-
rect frome Restowne⁷ to Scotland, in pe Pakald be post, quhilk wes pe tyme I wes at 3owr Maieftie.
The wordis of pe Letter ar pir; '3owr Maiefties promyses ar bot dissimulatione;' and that '3owr
Maieftie is bot lyke thais that ar about 3owr Maieftie.' S^r, quhen as thay wrait swa, iudge quhat
thair speeches wilbe amongis pair familiares! And my pairt of pe Letter is, S^r, that I 'mereit rather
hanging nor ony wther rewaird!' S^r, this is bot ane pairt of pe Letter. S^r, quhen this Letter wes red
in Scotland, it wes na small reioysing to pe Ruthuenis; ffor in guid faith, S^r, skarce, quhen thai hard
thais newis, that pe twa pairt of pe calsay culd content pame for pryde; as sum of pair awin name
quha wret pe Letter had experience of. S^r, pleis your Maieftie, feing (prayfit be God) thair is ap-
pearance of forder licht of pat Treffoun,⁸ S^r, for Goddis cause, lat it be exactlie tryit; ffor in guid faith,
S^r, be all thay traitowris fauowraris, 3owr Maieftie is callit 'pe Murtherar!' And my parte, 'ane
manefuorne knaiffe!' S^r, thair is twa in particular, quhilk in guid faith 3owr Maieftie is obliffit to,
wiz. Schir Jhone Moncreif and pe Laird of Bogie; ffor in guid faith, I cum newer in pe pairt, bot
pair language mett me, that thay tuik it on pair conscience that quhilk I deponit aganis thay tratowris
wes pe treuth. I pray God, gif 3owr Maieftie knew pe hundreth part of pe greifis I haif sustenit, pir
fywe 3eiris bygane; quhat be the infamows lybellis, and speeches of thay tratowris fawouraris.

Thus taking my leif, on my kneis, craifand at pe Almichtie, to 3owr Maieftie, pe Quene and Prince
graces, with all the rest of 3owr Maiefteis royall posteritie, mony guid and ioyfull dayes, with a hap-
pie and ioyfull resurrectione.

3owr Maiefties most humbill and daylie oratour,

[This Letter bears no date, but
probably in July, 1608.]

ANDRO HENDERSOUN of Latoune.

To pe most nobill, gratiows, and hie renownit Pryns, KING JAMES of Britaine, ffrance and Yreland.

¹ The date may be fixed to be 1603, as mention is made of the Duke of Savoy's attempt on Geneva. ² 'Hereawa,' in these parts. ³ From Collection of Autographs, formed by Sir James Balfour of Denmylne and Kinnaird, Bart. Lion King at Arms, preserved in the Adv. Library, Edinburgh. ⁴ This word had been originally left blank. The person whom Henderson employed to transcribe the Letter was probably kept in ignorance of the fact. Henderson inserts 'Scone' in his own hand. ⁵ Before. ⁶ Sir David Murray of Gospertie, created Lord Scone, and afterwards Viscount Stormont. He obtained the barony of Ruthven, and the lands attached to the Abbacy of Scone, of which the Earl of Gowrie was Commendator. ⁷ Royston, one of the royal residences in England. ⁸ This proves the Letter to have been written previous to the Examinations, at least, before the Trial of George Sprot.

Jul. 1608? (13.) LETTER, DAVID LORD SCONE to KING JAMES VI., *exculpating himself and his nephew from the charges brought against them by ANDRO HENDERSONE.*¹

PLEIS 3OUR SACRED MATIE,

I wes conveynit heir, before my Lord of Dunbar, and confronted with Andro Henryfoine, wpoun fume wnreuerend speiches spoken be me of 3our Matie, quhilkis wer alluterly denyit, in the presence of S^r Alex^r Hay, 3our Matie's secretar, that euer he had spokin or wrettine any thing in my preiudice, ather to 3our Matie or ony vther man leiveand; quhilk, if I haid euer hard spokin be ony vther man in the world, wncallendgeit, I micht bein thocht the onlie wngrate and wnworthie man in the world: Bot I leave this to 3our Matie's gracious confideratione, what all my actiones hes bein in 3our Matie's service, bothe in word and deid; quhair of I will be glaid content to be censuret, be my grittest enemyis. Now, S^r, to qualesie the informatione of Andro Henrysonis, he hes producit ane Lettre of my brother soneis, direct fra Ingland to me, about the space of four 3eiris and ane half fence; at quhilk tyme, 3our Matie will be remembrit, I maid eirnest sute, to haue haid the fauour to have remayneit with 3our Matie, and to haue haid some place of credit thair; whereanent, it pleasit 3our Matie to say to me, that 3our Matie wold advyse with some of the Inglis Counfall, to gett fume place to me; and at my way-comeing fra 3our Matie, I delt with fik of 3our Maiesteis Counfall, as come vp with 3our Maieftie, to be my freind, in absence; feing all the rest of the Scottis Counfall that come with 3our Maieftie wer preferrit to placeis of credit (bot I): Of quhome I ressaueit verrie fair promiseis, nocht only to remember 3our Maieftie, bot to be my particular freind. And my brotheris sone beand thair, vpone some vther biffineffe of his awin with 3our Matie, I desyreit him to hald fic of the Counfall, as haid promesit to be my freindis, in remembrance; quhilk he did, according to my Directione, and wrett heir to me to Scotland with Mr David Murray, that he had kissit 3our Maiesteis hand, and ressaueit verie guid wordis and fair promiseis, that yee wold nocht onlie remember 3our Matie, and advyse with pame on the meynis, how some place micht be gottin to me. Quhilk Letter pat me in hop to beine fend for schortlie thairefter: And within fyf or sex dayis efter pe receitt of this Letter, my brotheris sone wrett to me ane vther Letter, producit now be Andro Henderfone, wherein he affuiris me, he is certeseit, be sum speciall freindis of myne, that the fair promiseis that wer maid be sum of pe Counfall, wes nothing bot diffimulatione; and speciallie of thame pat I trustit maist into; ffor be sum speicheis that he haid hard, he feirit pat pei sould rather kyth my vnfreindis, and that 3our Matie wes informeit be sic as wer about 3ou, that I haid sent Andro Henderfone to beg sumthing fra 3our Matie that I could nocht mak sute for my self: And quhateuir 3our Matie haid grantit to gif to him, 3our Matie wes informeit, he haid transactit with me for pe same; and I wald gett pe same to my self. Thir speicheis beand reportit, be sum freind, to my brotheris sone, and he, feiring I micht be moveit fra the loue I buire to Andro Henderfone, to pas his Gift, quhilk 3our Matie haid grantit to him, and that the samin micht be layd to my chairge sum vther day; and out of the love my brotheris sone buire to me, he gave me this aduerteisment; and alsfone as this Letter came to my handis, I sent it to Andro Henderfone, to the effect that he sould tak na exceptionis of my guidwill, albeit I haid refuisset to pas his Gift, in respect of the premiffis; bot I gaif him suretie that I wald deill with 3our Matie for ane benefit to him, quhilk I did; and obtenit of 3our Matie better nor Sevin hundrethe merkis be 3eir, quhilk he posselles presentlie; quhilk wes thocht, be maney of pe cuntrie, mair nor he meretit; 3it, in respect he did 3our Matie no evill, being quhair he micht haue done it (if God haid nocht bein 3our Maiesteis better freind;) and euer fence that tyme, I haue reteynit him in my service, and hes protectit him and euer fall; and he hes haid pe commandement of all pat I haue, in theis pairtis. Bot 3our Matie will knaw, in the awin tyme, that pis is nocht come fra Andro Henryfone; for he wes neuer

¹ From the original, in Sir James Balfour's MS. Collection, Adv. Library.

very wyfe, and he hes loft ane guid pairt of þe witt quhilk he haid; for it appeiris he is nocht his awin Jul. 1608? man; for the quhilk I ame maift forey: And I will neuer tak me to him, for ony thing that can be reportit of me to 3our Matie; and in the awin tyme, 3our Matie will knaw how this comeis, fra quhome and how this pure man hes bene abuseit. Alwayis, I man leave this and all my vther actionis, bothe in word and deid, to 3our Maties gracious confideratioun, fra the first tyme I haid þe honour to ferve 3our Matie, quhilk is threttie tua 3eiris fence; and I neuer haid caus to weyrie; ffor 3our Matie hes nocht onlie honorit me, bot gevin me all I haue in the world, and brocht me vp fra nothing; and if I fould prove vngratte and wuthankfull to fa gracious a maifter, I mereit punefment aboue all tratouris in the world. Sa wiffing 3our Matie all happines, withe þe contenance of 3our Maties guid helthe, I reft 3our Maties humill and obedient fervitour,

D. SCONE.

[THE envelope has not been preserved, but the letter is marked, at the top of the folding, 'L. Scone to the K.' No date is noted.]

(14.) LETTER, SIR ANDREW MORAY of *Balvaird*, to KING JAMES VI., *defending himself against the accusations of ANDRO HENDERSOUN, Chamberlain of Scone.*¹

MAY IT PLEIS 3OUR SACRED MAIESTIE,

I HAVE bein, be vertew of 3our heichnes commandement, accusit be the Erle of Dumbar, as gif I had bein ane most ondwertifull subiect vnto 3our Maieftie, kything the malice of my hart by the vtter- ing of onreverent speiches. 3our Maiefties informer is Androw Hendersoun, of quhom I will forbear to speak any thing, least I fould feim to haue no better defence nor² the accusing of my accuser. The first point of my accusatioun is, that I haue callit 3our Maiefties promisis bot diffimulatiounis; and quhatfoeuer may, by consequence, be inferrit vpon this point; for verificatioun quherof, he hes producit vnto the Erl of Dumbar, ane Letter, wrettin by me, from Roistoun, the last of March, 1604, directit vnto my vncle, my Lord of Scone. The woordes are these. 'My Lord, Efter I had wrettin at lenth vnto 3our lo. with Maister David Moray, I have tryit sum thinges, quherof my dewtie bindes me to aduertise 3our lo. notwithstanding of that quhilk I wret to 3ow in my last Letter, that his Maieftie had said vnto my self, concerning 3ow; I fear it be al bot diffimulatioun.' Quhilk woordes, how far thay man be wresit befor they can prooue the thing alledgit, I am perswadit that 3our Maiefties self, without any apologie of myne, will most gratioullie consider. Neuertheles, to the end 3our Maieftie may the moir cleirly onderstand how far this malicious imputatioun dislagreis from my trew meaning, I will bot schortlie say this meikill. That former Letter, quherof I maik mentioun, sent be Mr David Moray, had in it tua pairts; the first, was ane declaratioun, how 3our Maieftie had not only most gratioullie admittit me to 3our presence, bot also gracit me with most fauorabill countenance; and mairouer most bountifullie had givin commandement to gif me tua hundreth pund. The vther part was, that I had rememberit my vncle vnto findrie of 3our Maiefties Counsell, and sum of 3our fauorites, from quhom I had refaut great protestationes of affectioun vnto him, and as great promisis of friendship, in his adoes.³ Bot befor the wretting of this last Letter (quherof I am now accusit), I was certanlie informit, be sum of my vncles special freindes, that they from quhom I had refaut fairest woordes, wer his greatest enemies: Quhilk, mouit to call their promisis diffimulat. Sa that the fence of my woordes ar very cleir, after this maner; 'notwithstanding of that quhilk I wret in my last Letter, that 3our Maieftie had said and done vnto my self, 3et that quhilk I wret concerning my vncle I tuik it al to be bot diffimulatioun.' Gif my former Letter wer as weill to the foir, to be producit vnto 3our Maieftie, as this last is, it wald maik this mater most cleir. Bot as God schal be my iust judge, I

¹ From the Denmylne MS. Advocates' Library, Edinburgh.

² Than.

³ Concerns.

Jul. 1608. haue fet down vnto your Maiestie, most trewlie, beath the contents of the one, and my meaning in the vther. Then fallowis, in my Letter, ' I knew his Maiestie to be, as they ar that be about him; and I affuir you, ye haue na fauour of them that ar in greatest credit heir.' To this I ansuer, that I was neuer sic a fott to think that your Maiestie was so simpill to be guidit be them that ar about you. I protest, befoir God, that I had na sic meaning. I haue baith hard and sein to muche of your Maiesties wisdom and resolutioun to think sa vyld a thocht. Bot my meaning was, ' seing my vncl had no fauour of them that wer in greatest credit about your Maiestie, (the quhilk I was most certanlie mead to beliene,) therfoir I greatlie fearit that their hard informatioun might muif your Maiestie agenst him, he not being present to answer for him self, and hauing about your Maiestie so many enemies.' Their restis yet more in my Letter. ' I heir say that their is ane turn past heir, in faoures of Androw Henderfoun, into the quhilk your lo. hes great neid to tak head to your proceeding; for albeit his Maiestie hes past it vnto him, I fear it be rather to try how ye behaue your self, nor for any good mynd they had to pleasour Androw Henderfoun.' Theis woordes I houp neid no apologie. Befoir God I had mynd of no thing concerning your Maiestie. I know, and that be experience, that al your Maiesteis grantes ar and haue bein euer most frie and absolut. My only meaning was, of the advantage they that wer about your Maiestie might maik of my vncl's behaviour in this matter; ffor it was directlie said, be sum of them, that he wald content Androw Henderfoun with a smal pairt, and tak the rest to him self. From this point, it will pleis your Maiestie to confider, that the grund of my accusatioun proceeds, and not from that zeal and affectioun my accuser professis to bear vnto your Maiestie: or els he had communicat this vnto your heichnes, at the first, and not keipit the sam besyds him thir four yeires and moir; and now at lenth reveilit it, be the instigatioun of vther men, as him self pairtly confessis. Their is no man could moir iustlie accuse me vpon this mater nor the Erl of Dumbar, gif his lo. had knawen my trew meaning; for it was his lo. of quhom I cheiflie meanit in my Letter: And I haue crauit his lo. most humblie pardoun, for that I was sa folische, vpon any informatioun, to beliene, that his lo. thocht vtherwayis nor he had said vnto my selff. Gif I durst haue presumit, vithout your Maiesties leue, I wald, with prostrating my self at your Maiesties feet, be woord, and not be Letter, mead this my most trew Declaratioun; and vnto the tym your Maiestie grant me that libertie (quhilk be thir presents I most humblie beg at your gracious handes) my hart schal neuer be pertaker of any contentment; albeit my conscience bears me witnes, that I neuer sa mekill as thocht onreuerentlie of your Maiestie, yet am I grevid aboue measur to think that any thing fould haue escapit my hand, quhilk, in the hardest construction, can be accomptit for ondewtifulnes against your heichnes. Their is na thing in this world can discontent me mair than to want your Maiesties fauour; bot to want it throch my awen iust deseruing wer to me insupportabill. I wer to be accomptit the most ingrate wrech that euer had lyf, gif euer I had sufferit any such thocht to haue had place within my mynd; confidering the manifold faoures your Maiestie hes schawen, baith to my self and al my kynred. Their remains yet the last point of my Letter, into the quhilk I maik sum mentioun of my Lord Secretar. My simpill meaning was, that his lo. at that tyme had not sa great fauour as he desyrit to haue had, of theis that wer in credit about your Maiestie. I will cease to trubill your Maiestie any moir, w^t my idill woordes; not dowting bot your Maiestie will, according to your accustomit goodnes, confider that the affectioun I careit vnto my vncl's weill, mead me the moir earnest in my Letter; and gif their be any woordes in it onadvyfit, or not weill chofin (as I do confes their is many) your Maiestie will imput them to want of witt and laik of discretioun (quhilk euer accompaneis youth,) and not to malice, quhilk I protest, in the presence of God, is as far remouit from my hart, as it stiks neir to their hart that does accuse me. Praying vnto the Eternall to grant vnto your Maiestie ane moift happie and prosperous regne, ane bliffit and ane long lyff, I rest

your Maiesties most humbill and most obedient subiect,

S. ANDROW MORAY
of Baluaird.

EDINBRUGHE, the 13 of July, 1608.

(15.) LETTER, *Alexander Blair in Colone, to (David Lord Scone,) charging* Apr. 1610.
*Hary Ruthven with using treasonable expressions.*¹

THIS is to latt 3our ll. wnderstand the wordis that Hary Ruthven spak. He vas cumand downe betuix 3our ll. park dykis, aboue Scone; quhair he and William Wallace, feruitour to my ll. of Blantyr fell in conference about ane SPROTT, quha was execut in Edinburg at that tym. William Vallace sayis to Hary Ruthuen, 'this mater is mead cleirer nor it was.' Hary Ruthuen anfueris him agane, and sayis plainely, 'Ha! ha! THE ERLE OF GOWRY was faiklely put downe! And the King, and all that was thair that day, vas Trateuris to the Erle of Goury!' And William Vallace anfuering, forbade him to speik fik language, for it wold do him evill. This I thought good to advertice 3our ll. that his Ma^{tie} our gratius foueran might be acquent therwith. I have subfcryvit this with my hand, and am redy, for my dewty to his Hienes, to seale it with my bluid.

ALEX^R BLAIR.²

M. G. Graham³ B. of Dumblane, vitnes to this subfcripne.

(16.) DEPOSITIONS, *relative to the Treasonable expressions made use of by*
*HARY RUTHVEN alias FREELAND.*⁴

(i.) AT EDINBURGHE, the xxvj day of Aprile 1610, IN PRESENCE of *Alexander Erle of Dunfermlyne Lord Chancellor, David Lord Scone, the President, Aduocat, and Schir William Hairt Justice depute.*

ALEXANDER BLAIR in Colone, maryed, of the age of xxxviij yeiris, sworne vpoun his great aithe, being humblit vpoun his kneis, and demandit, 'What war the wordis he hard Hary Ruthuen speik, for the whilk he hes bene wardit thir diuers oukis bigane?'⁵ Deponis, that vpoun the aucht day of September, the yeir of God I^m.vj^e and aucht yeiris, Hary Ruthuene, William Wallace servand to the Lord of Blantyre, and the depouner, having mett togidder in Colone, and being comeand thairfra towardis the burgh of Perth; as thay war betuix my Lord of Scones Park dykis, aboue Scone, Williame Wallace sayis, that 'This mater of GOWRYS TREASOUN is maid cleirar nor it wes, be the Executioun and Confessioun of one named Sprott.' Vnto whome Hary Ruthuen anfuerit, that 'The Erll of Gourye was ane honnest man, and that he wes faiklellie putt down!' And that 'Thay wer all traytouris that wes at his Slauchter, King and all!' Qubairupoun William Wallace replyit, 'Speik not fik language!' And this deponer said to him, 'That is sclanderous language: You do not weeie to speeke fik language.' And the depouner sayis, that Hary Ruthuen and the depouner wer in goode termis of freindschip, at that time; and that Haryis wyffe and the depouner ar thridis of kin: And deponis, that Hary Ruthuen and William Wallace ar vnder very grite freindschip and kyndnes; and that Hary Ruthuen is doar and factour to Williame Wallace, in this rowme of Colone; and Hary aggreit Williame Wallace and Agnes Seytoun, anent hir lyverent of the rowme; and that Hary Ruthuen fend to Williame Wallace, ane hundreth merkis, in Januair last. Demandit, 'ffor quhat caus he concealed this mater, fra the moneth of September, quhill the moneth of August thairefter, that he reveilled it to the Lord of Scone?' Deponis, that shortlie thairefter, he tauld to Henry Rattray, goode-bruther to the said Hary Ruthuen, that the said Henry Ruthuen had spokin sclanderous wordis of the King; and that the depouner wald haif reveillit the same to the King, yf he wes in the cuntrey: And feing his Maieftie wes absent, that he wald tell it to my Lord of Scone: To whome Hary Rattray anfuerit, 'He will defye 3ow and my Lord of Scone bothe; for he hes alreddy biddan the prwffe of

¹ From the Original, among the Warrants of Parliament, &c. General Register House. ² There is written in a very small hand, as a memorandum at the foot of this document, 'From Justice Clerk, Mr W^m Hairt this day xv dayis.' The date is likely to have been in April, 1610. ³ Mr George Graham, Bishop of Dumblane. He was translated to the see of Orkney anno 1614. ⁴ Originals in General Register House, among the Warrants of Parliament, &c. ⁵ Weeks past.

Apr. 1610. the cannoun !' And deponis, that findrie tymes, he foght the occasioun to haif tauld it to my Lord of Scone, but could not haif it; and that shorthlie thairefter, he come to my Lord of Scone, being walking vpoun the Greene of Scone, and tauld him that he had some mater to communicat vnto him; and my Lord anfuerit, 'Come to me ane vther tyme and I will heir 3ow.' Deponis alsua, that afoir that tyme, he reveilled this fame mater to Andro Henderfoun, who advisit the depouner to 'tell it to my Lord of Scone; and that nane hard this conference bot Andro Henderfoun and the depouner: And the depouner sayis, that he tauld this to Andro Henderfoun, within fourtene dayis after that Hary Ruthuane spak it; and he tauld it to Hary Ratray, within ane moneth after the speiking of it. Deponis alsua, that lang afoir Hary Ruthuen spak thir speeches of his Maiestie, the depouner hard him say, 'Andro Henderfoun is going to big (*build*): Lat him big quhat he will, I hoip to see the day that I fall putt him out of his house and duell in it!' And that Adame Hepburne in Scone, and David Blair thair, wer present, and hard thir speeches, quhilkis wer spokin in Sanct Johnnestoun, in Andro Boydis house thair, as thay wer come from the buryall of ane woman callit Coke, as he rememberis; and that Hary Ruthuene directit his speeches, on this mater, to the depouner, bidding him 'Go tell the fame to that fals knave Andro Henderfoun!' Deponis forder, that after Hary Ruthuen had spokin thir wordis, concerning Andro Henderfoun, that Andro Henderfoun and the deponer, being walking together on the brig of Perth, Andro Henderfoun perfavis Constene¹ Hynd vpoun the brig, and left the depouner, and past to Constene Hynd; and as thay war speiking togidder, Hary Ruthuen come by, gaif Andro Henderfoun ane grite touke² and almost putt him over the brig, saying vnto him, 'You may hald out of my gait!' And this wes fourtene dayis afoir the falling of the tree-brig of Sanct Johnnestoun.

(Sic subscribitur)

ALEX^R BLAIR.

HARY FRIELAND, sumtyme callit HARY RUTHEN,³ of the age of xl yeiris, maryed, duelland in Sanct Johnnestoun, being humblit vpoun his knees, solemnelie sworne vpone his grite oathe, and demandit, 'Yf he rememberis, that in Harvest wes a yeir, in the moneth of September, he and Williame Wallace, with Alexander Blair come from Collone to Sanct Johnnestoun?' Deponis, [he rememberis⁴] that he⁵ come frome Colloun that day, towardis Sanct Johnnestoun,⁶ and that Williame Wallace and Alexander Blair come [in company] togidder, and that [a litle afoir thame] Henry Balnavis, Johnne Broun notair, [and Andro Gairdner,] and the depouner went [in company] togidder; and thay wer a large space befoir Williame Wallace and Alexander Blair, and staid for thame vpoun the top of the parkis of Scone, befyde the stane brig: And that the caus of thair being at Colone, wes, for geving of feafing of the Landis of Coloine to Williame Wallace; and that thai come all togidder fra Colone, in companyis, as is afoirsaide [to Scone.] Demandit, 'Yf ther hes been ony grudge or evill will betuix Alexander Blair and the depouner?' Deponis, that thair hes bene some mislykeing and drynes this langtyme betuix thame, becaufe this depouner gaif informatioun and advise to the Lady Rossy to perfew Alexander Blair, for ane horse, quhilk violentlie he spulzeit and tooke from the Ladyis dochter; and becaus he affistit and fortifeit William Wallace and his tennentis aganis Alexander Blairis oppreffioun; and becaus the depouner wes a doar, in procureing of Agnes Seytoun lyvrent of the rowme of Colone, in William Wallace favour. Demandit, 'Yf at that tyme of thair comeing frome Colone, he hard Williame Wallace say, that the Treasoun of GOURY wes now cleirit and maid manifest, be the Deposition and executioun of one namit SPROT?' Deponis, vpoun his grite oathe, that he never hard William Wallace speik ony fik speeches; and that he never hard William Wallace name Sprottis name: And deponis, vpoun his grite oathe, that thair wes never ony fuche anfuer maid be him to William Wallace, as is affermed be Alexander Blair; and that thair wes no kynd of conference betuix thame, concerning that mater of Goury or Sprott. Demandit, 'Yf at ony tyme, he

¹ Constantine.

² A smart stroke or blow, by pushing or running at one.

³ The Sirname was formally

abolished by Act of Parliament.

⁴ These and the following words, within brackets, are interlined.

⁵ Altered

to 'they.'

⁶ 'Perth' deleted. Being the original paper, the corrections, on reading over the Depositions to the witnesses, are of course, made by the clerk.

sayd, that he fould duell in Andro Henderfonis houffis, latt him big as he wald?' Deponis vpoun his Apr. 1610. grite oathe, that he neuir spak ony fuch mater. Demandit, 'Yf afoir the falling of the brig of Sanct Johnneftoun, the depouner toukit Andro Henderfoun vpoun the brig?' Deponis, that at the tyme fpecifeit in Alexander Blairis Depofitioun, this deponer, comeing alangis the brig, with his horfe in his hand,¹ he forgadderit vpoun the brig with Andro Henderfoun, the Perfone of Bonhard, Alexander Blair, and Conftene Hynd, quho wer all ftanding togidder; and thay sufferit the depouner to go by thame vpoun the midis of the brig, becaus he had ane horfe; and at his by-paffing, his fhoulder tuicheit Andro Henderfoun, who tooke no offens thairat; and when the depouner was by² thame, Alexander Blair looked over his fhoulder and fayd to the depouner, 'Yow mycht haif gevin ws the gait!'³ And that Andro Henderfoun wes angerit at Alexander Blair for thir fpeecheis. And deponis, vpoun his grit aithe, that he spak na thing to Andro Henderfoun at that tyme. Demandit, vpoun his grite oathe, to declair, 'Quhat is his opinioun anent GOURYIS TREASOUN, feing he wes prefent with the Erll in the chalmer quhair his Maieftie wes perfewit?' Deponis, vpoun his grite oathe, that he is and ever wes of opinioun, that the Erllis pairt wes worft; feing he faw the King's Maieftie haif na thing but ane hunting horne about his neck. Demandit, 'When he mett laft with his bruther Alexander?' Deponis, vpoun his grite oathe, that he faw him nocht for aucht yeiris; and that the laft tyme he faw him wes in Hull, in England, afoir the deceis of the Quene of England.

(Sic fubfcribitur)

H. R. of Freland.

ALEXANDER BLAIR, re-examinat, grantit that he met with Hary Ruthuen and Williame Wallace, at the taking of Williame Wallace feafing of Colone; and that after the giving of the feafing, Henry Balnaves, Johnne Broun and Andro Gardiner paff away, and that Williame Wallace and Hary Ruthuene ftayed a quhyle behind, to tak ordour with the tennentis; and then thay tua, with the depouner, come togidder.

HENRY RUTHEN, confronted with Alexander Blair, anent the forme of thair comeing frome Colone: Deponis, as ofbefoir, that Williame Wallace, Alexander Blair, Henry Balnaveis, Johnne Brom and Andro Gairdner come togidder frome Colone; and that Williame Wallace and Alexander Blair fell togidder in cumpany; and the depouner and the vtheris perfonis foirfaidis fell togidder, and wer ever afoir Williame Wallace and Alexander Blair, whill thay come to the Hoill-brig, quhair the depouner and his company ftayed for thame; and then this depouner fell in company with Williame Wallace and Alexander Blair; and that the vther perfonis foirfaidis wer within the breid⁴ of this chalmer of the tolbuith to thame, and hard every worde that wes fpokin betuix thame.

ALEXANDER BLAIR deponis constantlie,⁵ that at this tyme, the vtheris perfonis foirfaidis wer the pace of three pair of buttis frome thame; and that he with Hary Ruthuen and Williame Wallace wer half ane hour togidder, at that tyme, going thame felffis allone.

HARY RUTHUEN denyis this altogidder.

(Sic fubfcribitur)

ALEX^r BLAIR. H. R. of Frelandis.

WILLIAME WALLACE, feruand to Walter Lord Blantyr, fworne vpoun his grite oathe, being vpoun his knees; and demandit, 'Yf he knawis Hary Freland and Alexander Blair?' Deponis that he knawis thame very weele. Demandit, 'Yf in September 1608, quhen he tooke feafing of the hauch of Colone, yf Alexander Blair, Henry Freland, Henry Balnaveis and Johnne Broun wer thair?' Deponis, that thai wer all thair. And that efter the geving of the feafing, Alexander Blair tooke this depouner in to his houle to drink; and the vtheris perfonis foirfaid went afoir, and the depouner and

¹ He led his horse over this frail wooden bridge, which must have been in a very crazy condition, and probably without ledges, for in 'tuiking' Andrew Henderson, he 'almaist patt him over the brig.' ² Past. ³ The most honourable part of the way was 'the crown of the calsay,' or middle of the street. To usurp this privilege was attended with as much danger, as 'taking the wall,' in the days of Addison or Sir Richard Steele. A great deal of bloodshed took place in both countries, on such trifling matters of mere punctilio, between hot-blooded 'gallants.'

⁴ Breadth.

⁵ Without varying, with constancy.

Apr. 1610. Alexander Blair followit, and our-tooke thame at a mylne, quhair Hary Freeland and his cumpany went in to drink;¹ and the depouner and Alexander Blair stayerd vpoun thame befyde the mylne, quhill thay come out; and then thay come altogidder fra the milne, in company, to Scone; and drank in my Lord of Scones fellair, as the depouner rememberis. Being demandid, 'Yf thair was ony speeche or conference betuix the depouner and Hary Ruthuen concerning GOURYIS TREASOUN or GEORGE SPROTT?' Deponis vpoun his grite oathe, that thair was nevir ony kynd of speeche, talking, or conference amang thame, concerning that mater of Goury or of Sprott; and that the affirmatioun of Alexander Blair, in that mater, is ane vntreuthe. And denyis that haill mater, and all the circomestanceis thair of, and all that is deponit, writtin and subscryuit be Alexander Blair, concerning that particular: And deponis, vpoun his grite oath, that, as he rememberis, thair wes no privat conference betuix the depouner, Alexander Blair, and Hary Ruthuene, that day: And deponis, that he had priue conference, that day, with Alexander Blair, anent the roume of Colone; and that Alexander Blair maid ane offer of iij^m markis² for the same, quhilk the depouner refuist.

(Sic subscribitur) WILLIAM WALLACE.

ALEXANDER BLAIR, confronted with Williame Wallace, anent the conference betuix thame and Hary Freeland, in thair comeing frome Colone: The said Alexander abydis be his former Deposition, anent the mater of Gourie and Sprott; and Williame Wallece denyis the same altogidder.

(Sic subscribitur) ALEX^r BLAIR. WILLIAM WALLACE.

(ii.) AT EDINBURGHE, the xxvij day of Aprile 1610. IN presence of the *Examinatouris* aboute writtin.

ALEXANDER BLAIR and HARY RUTHUENE being re-examinat and confrontit, vpoun the speecheis past betuix Hary Ruthuen and Williame Wallace, concerning Goury and Sprott: The said Alexander Blair abydis constantlie be his formair Deposition, in that mater; and the said Hary Ruthuene altogidder denyis the same. The said Alexander Blair offerit, in the said Haryis presence, to try this mater BE SINGLE COMBAT betuix thame, quhenver it fall pleis his Maiestie or Counsaill to appoint thame tyme and place; althocht it wer this same nycht: And sayis, that he is content to be hangit, yf in the combatt he move not the said Hary to confes the treuthe of this mater, as he hes deponit aganis him. The said Hary Ruthuen anfuerit, that he can not be vrgeit, be law, to fecht in fuche a quarrell: And that he will abyde the ordinair tryall of the law; and refuist the Combatt.

ALEX. BLAIR. H. R. of Frelandis.

WILLIAME WALLACE, being re-examinat, abydis constantlie be his formair Deposition maid yisterday.

AL. CANCELL^r. D. SCONE. JO. PRESTON. S. T. HAMILTON. S. WILLIAM HEART.

(iii.) AT EDINBURGHE, the last day of Junij 1610. IN presence of the *Erll of Dumfermyne Chancellour, David Lord of Scone, Mr Johnne Prestoun of Pennycooke President, Sir Alexander Hay Kingis Secretair, Sir Thomas Hammiltoun of Bynnie Aduocat and Mr George Young.*

HENRY RATTRAY of Kincarrody, maryed, of the age of xxx yeiris, or thairby, fworne vpoun his grite aith, and demandit, 'Yf Alexander Blair come to him, and tauld him that he hard Hary Freeland speeke some outrageous speeches aganis the Kingis Maiestie?' Deponis, vpoun his grite aithe, that Alexander Blair nevir spak ony fuche mater to him. And sayis, that Williame Wallace haveing chargeit Alexander Blair to find him law fouirtie, the said Alexander Blair come to this depouner, ane moneth afoir Hary Freeland wes maid prifouner, and sayd to him, 'Can I not be quyte of your goode-bruther? I vow to God, yf I be not quyte² of him, I fall putt ane fleche³ in his hoife!'

¹ This word deleted, and five words interlined. ² 3000 merks. ³ Fr. *quitte*, requited. ⁴ Fr. *fleche*, a shaft or arrow.

ALEXANDER BLAIR, being confrontit with Henry Rattray, and being re-examinat, vpoun that pairt Jun. 1610. of his formair Deposition, concerning Henry Rattray, the said Alexander, with mony aithis, abydis be his Deposition, in that point : And the said Henry Rattray, with mony aithis, denyis the same, and that thair wes nevir ony fuche purpois or conference betuix thame, as is contenit in that Deposition.

DAVID BLAIR in Scone, maryit, of the age of xl yeiris, fborne and demandit, ' Yf he rememberis that Alexander Blair, Henry Freeland and the deponer wer drinking togidder in Andro Boydis hous ?' Deponis, that he rememberis weele thair of, and that Henry Rattray tooke thame in, to gif thame ane pynt of wyne, they being come frome the buryall of ane woman in St Johnnestoun. And deponis, that the company falling in discourse, ' who had the best aill in the cuntrie ?' ¹ It wes anfuert, be one of the company, that ' Andro Henderfoun Chalmerlane of Scone haid the best aill.' And then Henry Freeland sayd, ' Andro Henderfoun is bying, and bigging, and conquessing. It is evill to witt quho may brooke and posses thame heirefter, for all his goode aill !' And deponis, that he directit thir speeches to the haill company ; and sayd, that ' he caird not quha wald tell it to Andro Henderfoun.' And the depouner rememberis not that he called Andro Henderfoun ' ane false knaif ;' bot sayis, ' he gaif evill wordis anew.' And sayis, that the Parfone of Bonhard wes present, and hard thir specheis.

CONSTANTYNE HYND, in Brigend, vnder the Baillie of Errole, maryed, of the age of xl yeiris, fborne and demandit, ' Yf he rememberis, that a litle afor the falling of the tree-bridge of Perth, this depouner, Andro Henderfoun, and Alexander Blair wer walking togidder vpoun the bridge ?' Deponis, that he rememberis very weele thair of ; and that in the meantyme, Hary Freeland come alangis the bridge, with ane naig in his hand ; and the deponar, with his company, having thair bakis to Hary Freeland, he said to thame quhen he come to thame, ' Gif ws the gate !' And in his by-ganging, the passage being narrow and strait, the depouner is of opinioun that he rubbit clokis with Andro Henderfoun, and past by without ony forder specheis. And deponis, that Alexander Blair sayd to Hary Freeland, when he wes by, ' The half of the gait mycht haif served yow, when yow crapt vnder the boorde !'

AL. CANCELL^s. D. SCONE. ALEX^r HAY. S. T. HAMILTON.

No. XX.

LETTERS OF JOHN, EARL OF GOWRYE.

[THE following Letters of JOHN EARL OF GOWRYE, are the only specimens of his literary compositions now known to be extant. The original of the Letter to King James VI. was presented to the College of Edinburgh, by Drummond of Hawthornden, in 1626 ; but it has unfortunately been either mislaid or lost, (with other autograph Letters in the same Collection,) subsequent to the year 1757. About that time, it had been transcribed and published by Sir David Dalrymple, Lord Hailes, in a reprint of the ' Account published by authority,' (No. IV. of the present Collection of Illustrative Documents,) and which was intended by him to serve as a specimen of his projected Collections relating to the Gowrye Conspiracy.

The other Letter is preserved in a volume of Original Papers, collected by David Calderwood the historian, who was a fellow-student, under Principal Rollok, with the Earl of Gowrye, at the College of Edinburgh ; where they took the degree of Master of Arts, in 1594. At the time of writing these Letters, the Earl was in his 17th year, prosecuting his studies at Padua. They are also given, pp. 351-6, of the valuable ' Miscellany' of the Bannatyne Club. A fac-simile of the Earl of Gowrye's subscription to the last of these interesting reliques concludes this Collection of Papers.]

¹ ' Toun' is deleted.

Nov. 1595.

1. LETTER, *the Earl of Gowrye to King James VI.*

PLEASE YOUR MAJESTIE,

GIF the bestowing of great benefites fould moue the receauers theroff to be thankfull to the giueris, I haue mony and extraordinar occasiōis to be thankfull to your Majeste; not only being fauored with the benefite of your Majesteis gude countenance at all tymes, bot also that it hath pleasit your Majeste to accept so weill of me, as to honour me with your Majesteis most louing letter, as with ane certane signe and viue testimonie of your Majesteis gude fauor and gracioufnes touartis me; wheroff I esteeme so much, that I wald think my selff very hapie, if it fould please your Majeste to comand me in any thing, that therby your Majeste might haue ane tryall of my prompt and fathfull obedience; for your Majesteis worthines and valor, attour the particular courtesis schauin to me, merits whatsomeuer I am able to do, and ane hundreth thousand tymes more. In end, I pray your Majeste to haue me excused that I haue taine the audacitie to wrett againe to your Majeste, for not hauing the comfort of your Majesteis prefence, could not declare my willing mynd better then be vsing of the nixt remede. In the meane tyme, I fall repose my selff still on your Majesteis constant fauor, quhill God of his mercie grant that I se your Majeste in fuche ane gude estate as I wishe, whilk will give me the gretest contentment of all.

Sua crauing earnestly of that Creator of all thingis to blis your Majeste with all felicitie and satisfactiōe in health, with ane increas of mony prosperous dayis, I kifs most deuotly your Majesteis hands.

Your Majesteis most humble subiect and obedient seruitor in all deuotione,

GOWRYE.

ATT PADUA, the 24th of November 1595.

2. LETTER, *the Earl of Gowrye to Mr Johne Malcome, Minister at Perth.*¹

Εὐλογητὸν ἐσὼ τὸ ὄνομα τοῦ Θεοῦ εἰς αἰῶνα.

BELOVED BROTHER,

HAUING taken occasione to wret to Scotland, wald nocht omitt my deutie to you, in visiting you with this letter, that therby ze myght vnderstand of my present estate, quhilk continues as ofbefore; praising God, from my hairt, that of the riche abundance of his gude grace and mere mercie hes maid the beames and licht of his countenance, to shine vpon me most fauorably; to be ane guide to conduct me saiflie *per hunc Auernum*, quherin mony here, (*quorum oculi densa*

¹ Mr John Malcolm, one of the Regents, and afterwards Principal of St Leonard's College, St Andrews, was ordained Minister of Perth, 4th November, 1591. He was the author of a Latin Commentary on the Acts of the Apostles, a work of considerable learning, printed at Middleburgh, 1615, 4to. He died at an advanced age, at Perth, 3d October, 1634.

caligine et nebulis obfuscati sunt,) *ô miserum spectaculum!* are drowned, in his Nov. 1595.
 iustice; I meane nocht all, *absit*; for I am acquainted with diuers heir, *qui,*
etiam inter has paludes stigas, hes neuer boued ther kne to Baal: Quhat ane
 meruell is this? and quha can beleue it? and zit it is certainly true; *glorificetur*
igitur Deus in operibus suis, ac eo magis quo sunt mirabiliora et παρὰ τὴν φύσιν.
 There wes ane notable exemple of constancie not long ago, in ane Silesian Minis-
 ter, of some threscore yeares and mair, quha, efter he had beine deteined in pri-
 sone about nyne yeares, and the Iesuites had trauailed with him to recant; bot
 persuaiffing that thei could preuaile nothing at his handis, caused bring him to the
 fyre, lyke bludie dogges; quhere, efter he had maid ane excellent discours and
 harang to the people, shauing them the gret honour he wes callit to in suffering
 for Christes sake, and exhorting them to conuersione, abode most patiently, without
 ony shrinking, all tormentis; magnifeing Godis holy name, and praying that
 ther finnes mycht be forgiuen them. Efter he wes brunt, not being zit satisfied
 of the crueltie that they had vsit against him, quhen he wes liuing, did cast ane
 gret heap of stoness vpon his ashes, *multo scæuiores quam erant Iudei aduersus*
Stephanum. There were vtheris, quha for feare of death, at that same tyme,
 maid filthie apostacie fra the true Religione to that damnable idolatrie; and at
 that instant that ane of them begane to deny Christ, in making defectione, there
 isshued blude out of his nose in fuche gret abundance, that all did see him thocht
 he sould have dyed presentlie. This wes ane visibill signe of the hand of God,
 that chopped on him quha had done such ane villanie against his conscience, for
 to purchase his auin lyffe, quhilk he wes not worthie to bruik, be the losse of his
 soule. Bot thir renegates not the les escaped not their auin punishment, for
 they all were send *ad triremes, ubi non vnius hore spatio vitam finituri, sed mo-*
rientes semper, nec tamen morientur. Laitlie, efter these thingis, ane certane
 Inglishe man, being moued on zeale to cast ther *sacra hostia* (as thai most falslie
 callis it) out of the priestis handis, that wes careing it in processione, to the
 grund, and to stramp on it with his fete, wes apprehendit and denudit of his
 clothes, thereafter ane hude putt on his heade, quheron wes painted the deuils
 image, and some with bleasis, quha brunt him continually in the backe and brest
 as he walked forduart; bot he, in the meane tyme, wes occupiet in schauing the
 people how thai were schamfullie abused by these miscent idolaters, quha were
 leading them to their auin damnatione. In end, he spake with such ane vehe-
 mencie, that the enymies caused knett his tounge, fearing some vprore to enseu,
 if he had gottin ony forder libertie to speke: So he wes brought to the place of
 executione, quhere, lifting vp his eyes to heauen, and on his knees kissing the
 chain he wes bund with, they caused first cut of his hand for the fact he had
 committed, and nixt burne him quicke. All thir thingis were done in Rome,

Nov. 1595. that mother of all vyce, and hoorishe synagog of deuils. I am fory that my absence will not permit me to kyth my mynd and gudwill, in helping to sett furth Godis glorie there, *cui totus ex animo incumberem*; bot quhen, at his gude pleasure, I retorne, fall with his grace, indeuore my selff to amend quhatfomeuer is omitted for laike of my presens. I thank 3ou most hartfully, of 3our remembrance of me in 3our prayeris; desyring 3ou earnestlie to contineu, according to the loue 3e cary to the saluatioune of my soule. Thus, remembering my loving commendationis to 3our selff, with the haille nychtbouris of the toune, Committis 3ou with them all to the protectione of the Omnipotent.

Youris aluayis affectionat,

GOWRYE.

AT PADOUA, the 28 of Nouember, 1595.

I DOUT nocht bot 3e haue hard, long since, of the Papes benedictione given to the King of France; quhilk hes turned to ane maledictione. No vther neuis occurris heir for the present; bot nou agane, latlie, there is some Inglishmen put in the hous of Inquisitione, in Rome.

To my beloued brother, MR JHONE MALCOME, Minister at PERTH.

No. XXI.

FAC-SIMILE OF THE SUBSCRIPTION OF JOHN EARL OF GOWRYE.

Yours aluayis affectionat.
J. Gowrye

[Mr Williame Haire, Justice-Depute.]

Writing Slanderos Pasquils against the King, &c.—Sedition.

Oct. 10.—FRANCES TENNENT, merchand burges of Edinburghe.¹

[THE TRIAL of Francis Tennent forms one of the series, in a black catalogue of Cases, which must leave an indelible stain on the character of King James VI. Owing to the scrupulous care adopted

¹ On the margin, 'Convictus et Suspendus.'

by the Lord Advocate to suppress these offensive papers, the precise nature of the Pasquils alluded to, cannot now be correctly determined. The likelihood, however, is, that besides 'detracting' the King and his 'maift nobill progenitouris,' and publicly branding the King as the 'Sone of Seniour Davie,' (a popular *soubriquet* for his sacred Majesty,) these offensive squibs had contained matter relative to the recent Conspiracy of THE EARL of GOWRIE. Such a conjecture is fortified by the circumstance of the well-known Mr Robert Bruce and Mr John Davidson, the persons to whom the Pasquils are fictitiously addressed, having publicly asserted the story of the Conspiracy to be an entire fabrication, and that the Murder was devised and perpetrated by the King and the Court faction, to rid themselves of a powerful rival.

After a minute and careful search, the Editor has not been able to obtain copies or fragments of these papers, or to get even a tolerable abstract of their contents. The only light we obtain from any contemporaneous writer, is from that amusing and minute Chronicler, Robert Birrell; who only ventures to say; 'The 8 of October, *Frances Kennaird* hangit at the Croce, for Treaffone aganis his Maieftie, for making of Plakketis and wreittis, sic as Cokkolentis.'¹ The latter part of this mysterious intimation would lead us to believe, that these pasquils contained, amongst other satirical remarks, reflections on the Queen's conjugal infidelity. It is certain, at all events, that this shot took effect; and it is equally clear, that his Majesty retaliated, in a most ungenerous and cruel manner. In the course of investigating the public Records, &c. the only notice which the Editor observed, was in the Lord High Treasurer's Accounts; where, in the month of October, the following entry is made: 'ITEM, to the Officeris of Justiciare, for summoning of ane Affyis to Francis Tennent, xlf.'

Should the Editor, afterwards, be so fortunate as to obtain inspection of these papers, or authentic contemporaneous transcripts, amongst the MS. Collections of Thomas first Earl of Haddington, then Secretary of State, Lord Advocate, &c. or from similar sources, they shall be given in the Appendix.]

Dilatit for false, malicious and vndeutifull wryting and disperfing of sklanderous, calumnious and reprochefull Letteris, to the dishonour of the Kingis Maieftie,² his hienes progenitouris, Counsale and proceedingis; conform to the Dittay, produceit (by) Mr Thomas Hammiltoune Aduocat to our fouerane Lord.

DITTAY against Frances Tennent.

FRANCES TENNENT, merchand burges of Edinburgh, 3e are Indytit and accusit for pe fals, malicious, vndewtiefull wryting and disperfing of sklanderous, calumnious and reprochefull Lettres, to pe dishonour of pe Kingis Maieftie, his maift nobill progenitouris, counsale and proceedingis; and steiring vp of feditioune and contempt in pe hairtis of his subiectis, aganis his Maieftie; in maner, substance and effect contenit in twa of 3our Lettres writtin, heirwith produceit, and vfit as ane pairt of 3our Dittay; The ane of the saidis Lettres, writtin with 3our hand, and subfcryuit be the feingzeit name of 'JAMES SYMPSOUNE, SCOLLER,' and directit 'to Mr Robert Bruce,' off the dait, at Newcastle, pe xvij day of Januar, the 3eir of God Im.Vc.lxxxxvij 3eiris; and the vther, lykewyis writtin with 3our hand, and subfcryuit with the feingzeit name of 'JOHNE STRATHAUCHIN;' and directit vpoune the bak, 'to Mr Johne Davidfoune:' Quhilkis twa Lettres, 3e laid doune in the Kirke of Edinburgh, to the effect the famyn mycht haif fallin in the handis of the pepill; thairbye to bring his Maieftie in contempt, and steir vp his pepill to feditioune and disobedience; exprefslie aganis the Lawis and Actis of Parliament maid aganis Lefing-makeris and authouris of feditioune and infamous speicheis and writtis. Quhilk 3e can nocht deny; Lykeas, 3e haif confest pe famyn, be twa feuerall Depositionis, subfcryuit with 3our hand.

¹ Perhaps for 'Cokkoleingis,' cuckoldings.
Apr. 25, 1601; and Ross, executed Sept. 10, 1618.

² See Cases of Diksoun, Aug. 3, 1596; Cornwall,

The Aduocat produceit his Maiesteis Warrant, for perfute of Frances Tennent.
The said Frances Tennent produceit certane

DEFENSES, *in writt, aganis the Dittay*; quhair of the tennour followis.

'IT IS alledgeit, for þe pairt of me Frances Tennent, that na proces aucht to be gevin aganis me, in þe Criminall actioun perfewit be my Lord Aduocat contrair me; becaus I am nocht deprehendit, *in recenti crimine*, bot is convenit vpoun ane deid, alledgeit done thre 3eir since or þairbye: And conforme to the Actis of Parliament, I aucht to be summond vpoun fyftene dayis wairning, and ane copie of þe Dittay gevin me; quhilk is nocht fwa done; bot I am summarlie presentit on pannell, without ony citatioun preceding. Secundlie, gifand¹ 3our lorfchip wald proceed aganis me the said Frances, nochtwithstanding the alledgeance foirsaid; 3it I aucht to haif ane copie of þe Dittay, and ane day assignit to me, to anfuer þairto; feing I am convenit on my lyffe; And gude reffoun vald I had ane day to be avyfit þairwith; And to remember the Dittay to be speciall, anent the cryme; And to allege, that speking generallie, without coursing,² is na lawfull cause to tak ane mannis lyffe. Thridlie, alledgeit, the Law Intitulat '*Si quis Imperatori maledixerit*,'³—and produceit the buik to instruct the Law, quhilk is ane Defence to me the said Frances in this caise.'

It is anfuerit be my lord Aduocat, that the alledgance aucht to be repellit, in respect of the Dittay contening the cryme of Seditioun aganis the Prince, quhilk may suffer na delay. As to the last Defence maid vpoun the Law, '*Si quis Imperatori maledixerit*,' the famin aucht to be Repellit, in respect of the Actis of Parliament maid anent the crymes lybellit; ordaning the authouris of sklanderous speichis and writtis aganis the Prince, his progenitouris, Counfall or proceedingis, to be puneist to the death.

The Justice ffindis proces: Quhairvpoun the Kingis Aduocat askit instrumentis.

The famin day, twa Letteris being produceit be the Aduocat, maid and writtin be Frances Tennent, togedder with his Depositionis; the said Frances acknowledgeit and confessit in jugement the samyn to be his handwrit: Quhairvpoun the Aduocat askis instrumentis; and in respect thairof, and of the ij^c and fyft Act of the Kingis xij Parliament, and vther Actis thairin mentionat, protestis, gif the Assyis clenge the said Frances, for Wilfull Errour.

The Aduocat produceit

HIS MAIESTEIS WARRANT to pronounce dome aganis Frances Tennent, in maner following:

¹ Giving or granting, that your lordship, &c. ² 'Curfing' had been originally written, and is deleted in the record, to make way for the *improved* orthography 'courfing.' ³ Codicis, lib. 9, tit. 7, l. unic. 'Quoniam si id ex levitate processerit, contemnendum est: Si ex insania, miseratione dignissimum: Si ab injuria, remittendum.'

REX,

JUSTICE, Justice Clerk and your Deputis, We greit you weill. It is our will and We command you, that you be fycht heirof, ye pronounce the dome following, you Frances Tennent burges of Edinburgh, efter his convictioun, of the forgeing and casting doune of certane seditious Pascallis:¹ That is to say, that he fall be takyn to the mercat croce of Edinburgh, and his tounge cuttit out at ye rute; and that thair falbe ane paper affixit you his brow, bering, that he is convict for forgeing and geveing out of certane vyild and seditious Pascallis, detracting us and our maist nobill progenitouris: And thairefter, that he fall be takyn to the gallous and hangit, ay quhill he be deid:² As ye will ansuer to us you our offices and obedience: Quhairanent, thir presentis falbe your Warrant. Subscryuit with our hand, At Lynlythqw, the xxij day of September, 1600 yeris.

(Sic subscribitur)

JAMES REX.

The said Frances produceit ane vther Warrant, subscryuit be his Maiestie, dispensing with the former Warrant, quhair of the tennour followis:

REX,

JUSTICE, Justice Clerk and your Deputtis and Aduocat, We greit you weill: forfamekill as, albeit be our vther Warrant direct to you, We commandit you to put Frances Tennent to ye torture of ye buittis; and pairefter to pronounce dome aganis him, that he suld be careit to ye mercat croce of Edinburgh, and pair his tounge to be cuttit out, and fyne hangit: Nochtwithstanding, for certane causses moving us, We haif thocht gude to mitigat that sentence, be dispensing with ye tortoring of ye said Frances, other³ in the buittis, or be cutting out of his tounge; and ar content, that ye onlie pronounce dome aganis him to be hangit, without any forder: Quhilk We command you to do, be thir presentis; and to forbeir the said tortour. Quhairanent thir presentis falbe your Warrant. Subscryuit with our hand, At Dundie, the xxvij day of September, 1600 yeris. (Sic subscribitur) JAMES REX.

VERDICT. For the quhilk crymes, the said Frances was put to the knowlege of ane Assyis,⁴ &c.; and (they) being throuchlie avyfit thairwith, reenterit agane in Court, quhair thay, be the mouth of George Dowglas, callit of Bengowre, chancellor, fand, pronunceit and declarit the said Frances to be fylit, culpabil and convict of the dittay abouewrittin, and crymes thairin contenit.

SENTENCE. The Justice-depute, be the mouth of Robert Galbraith, dempstar of the said Court, Decernit and ordanit the said Frances Tennent to be tane to ane Gibbet, befyde the mercat croce of Edinburgh, and thair to be hangit quhill he be deid; and all his movabill guidis to be escheit and inbrocht to our fouerane lordis vse, as convict of the saidis crymes.

NOTA. Immediatlie efter dome pronunceing, Mr Thomas Hammilton take vp the tua Lettres, writtis and Pascallis, the ane direct to Mr Robert Bruce, and the vther to Mr Johne Davidfone, Ministeris; quhilkis twa Pascallis he vald nocht haif insert in proces.

¹ Pasquils. ² This seems to be a dreadfully severe and barbarous sentence, when compared with the trivial nature of the offence; and marks a shockingly vindictive spirit on the part of the King. The case of Archibald Cornuall, Apr. 25, 1601, is another of many melancholy instances of the sanguinary temper of James VI. in all instances of infringement on his kingly dignity. Although the application of the torture, and cutting out of this unlucky libeller's tongue, were ultimately dispensed with, certainly the punishment was vastly disproportioned to the measure of the offence. The recent Conspiracies may perhaps have induced the King to make some severe examples; and poor Francis Tennent was offered up as the first suitable victim. Independently of his wounded kingly dignity, the wealthy burges's *escheat* had proved too great a bait to James's cupidity, to admit of his passing scot-free. ³ *Owther*, either. ⁴ Consisting of merchants of Edinburgh, but persons of no note.

Purchasing Poison—Poisoning Fowls.

Nov. 5.—THOMAS BELLIE, burges of Brechin, and James Bellie his sone.

Dilatit and accufit for contravening of our souerane lordis Actis of Parliament for bying, haifing and keping of poyfoune; mixing the samyn with daich,¹ and casting doune thair of in Jonet Clerkis 3aird in Brechin, for destructione of fowlis; be the quhilk poyfoune they distroyit to the said Jonet twa hennis. And being persewit be Mr Robert Lyntoune, substitute for Mr Thomas Hammiltoune, aduocat, for the said cryme, they refuset to pass to Affyis, bot come in our souerane lordis will for the said cryme: Quhairvpoun the said Mr Robert askit instrumentis.

The Justice continewis the said dyet to the morne.

Nov. 6.—Continewis *in cras*, the sevint of November.

Nov. 7.—Comperit Mr Johne Marschell, Minister of Brechin, and produceit his Maiesteis will; quhair of the tennour followis.

REX,

WE, vnderstanding that Thomas Bellie, induellar in Brechin, is become in our will for haifing and keping of poyfoune, and poysoning thairwith of certane hennis: Thairfor we declair our will as followis, to wit; That the said Thomas fall, within the space of fourtie dayes, remove and depairt furth of our realme, and remane as a exylit and baneist persoune furth pair of, during all the dayis of his lyffe; vnder the pane of deid: Commanding heirbye our Justice, Justice Clark and thair deputtis, to pronunce and delyuer pis our Will, iudiciallie; and cause registre the same in our buikis of Adior-nall. Subscriuit with our hand, At Halyrudehous, the saxt day of Nouember, 1600.

(Sic subscribitur)

JAMES REX.

SENTENCE. According to the quhilk, the Justice, be the mouth of James Lowrie, dempster, Ordanit the said Thomas, within the space of fourtie dayis, to remove and depairt furth of this realme, as ane exylit and baneist persoune, furth thair of, during all the dayis of his lyfetime; vnder the pane of deid.

Slaughter.

Nov. 12.—WILLIAME HOME of Ballicafs.

Dilatit of airt and pairt of the Slauchter of vmq^{le} M^r Alexander Dikfoune, sone to vmq^{le} Robert Dikfoune elder of Haffingtoune-maynis; committit the xxj day of Aprile, 1597 yeiris.

PERSEWAR, Johne Dikfoune.

THE Justice continewis this mater, to the saxt day of Marche nixtocum. 'Plegio, Wilelmo Home de Ballandyne.'

[*Mr Williame Borthuik, Justice-Depute.*²]

Jamesucken — Forcible Abduction — 'Rapt and Ravishing.'

Jan. 13, 1601.—JOHNE KYNCAID of Craighous.

[THE CASE of Kyncaid of Craighous, which follows, affords a lamentable instance of perversion of the ends of justice, while, at the same time, it contains a most amusing illustration of the cupidity and

¹ Dough.

² He also officiated on Nov. 20, 22, 25, Dec. 17, and Jun. 7.

meanness of 'King Jamie the sapient and fext.' At this period, it was by no means an uncommon thing, in Scotland, to make short courtships with heiresses and rich widows, by 'captivating' them by a *coup de main* and getting married, according to the briefest form recognized by the laws of the land; and, no doubt, some of these unceremonious courtships, in the long run, proved happy to all parties. The Laird of Craighouse, a Cadet of the ancient family of Kincaid of that Ilk, in Stirlingshire, (as were the Kincaids of Warriston, Craiglockhart, Coates, &c.) was possessed of considerable wealth. From the whole complexion of the following story, it appears pretty clear, that this luckless gallant had been regularly *trained* to carry off a certain buxom 'wedo.' It is not even alleged in the Dittay, that any violence had been done to the lady, farther than the fact of carrying her off. Perhaps it may be thought by no means improbable, that the Bailie of the Water of Leith, out of whose house she was said to have been carried, in the face of open day, was one of the parties concerned in *facilitating* the 'abduction;' for it is very unlikely, that a 'wedo' could be thus forcibly taken, (after breaking up the doors of her dwelling,) and that she could, by any ordinary force, be carried, against her inclination, through the Village of the Water of Leith, and also through a populous part of the country, in the immediate vicinity of the City of Edinburgh, to the foot of the Braid hills, where Craighouse is situated; without raising the hue and cry, and being released, ere she had been carried a couple of miles. But it is still more incredible, that the perpetrators of this outrage should, in addition to the palpable indiscretion of committing this crime in broad daylight, be such bunglers, as 'all by accident' to ride into the heart of the King's hunting party! The *machinery* of the imprisonment, trial, and subsequent proceedings, were admirably contrived to practise on the fears of the unlucky Laird; until, at length, he fell into the snare which was so craftily laid for him—he 'become in our fouerane lordis Will!' It appears from the Acts of the Privy Council, that, on Dec. 18, 1600, 'John Kincaid of Craighous (was) committit to waird, within the Castell of Edinburghe; thairin to be detenit, vpoun his awin expenffis, ay and quhill he be presentit to the Justice,' &c.; and the matter, as is proved by the Books of Justiciary, was hung up till Feb. 17, 1601; all which time poor Kincaid lay 'in durance vile,' and was finally forced, by *squalor carceris*, to accept of almost any terms. This 'Will,' it may be affirmed, is *matchless*! A fine of *two thousand five hundred merks* is imposed, which, considering the relative value of money at that time, was an enormous sum. To wind up the transaction, the King demands the Laird's *guid 'broune horſe'*, to quench the remainder of his wrath; and perchance the King would think, with the reader, that 'the rapt of Craighous' was the best day's sport he had had for many a year.]

Dilatit of airt and pairt of the Rapt and Reveifching of Iffobell Hutchesoun, wedow; taking of hir captiue, &c.

PRELOQUUTOIR for the pannell, Mr Johnne Drowling.

PERSEWAR, Mr Robert Lyntoun, substitute, for the aduocat.

The quhilk Johnne Kincaid of Craighous, hauing enterit on pannell, declarit, that he will becum in his Maieſteis will, ffor taking of Iffobell Huchfoun, wedow, his hienes frie leige furth of Johne Johnestoune, baillie of the Watter of Leithis hous, and taking of hir to his awin hous of Craighous; committit the xvij day of December laſt.

(Signed) JOHNE KINCAID.

DITTAY *against Johnne Kyncaid of Craighous.*

FORSAMEKLE as he, with conuocatioun of the personis vnderwrittin, and diuerſe vtheris our fouerane lordis leigis; To wit, Robert Kyncaid, fone to

Edward Kyncaid, burges of Edinburgh, Daid Watfoun, fister-fone to Johne Johnestoun, baillie of the Water of Leith, Johne Watfoun, his feruand, Alexander Barcar, baxter in Edinburgh, Johnne Quhippo, baxter thair, and Williame Hepburne, with diuerse vtheris his complices, of his speciall convocating, causing, command and directioun, laitlie, vpoun the xvij day of December lastby-past, being bodin in feir of weir, with swordis, secreittis and vtheris wappynnis, *invasiue*, contrair the tennour of our fouerane lordis Actis of Parliament, come to Johne Johnestoun, baillie of the Water of Leith duelling-hous thair; quhair Issobell Huchfoun wedow was, in sober, quyet and peceabill maner for the tyme, dredand na evill, harme, iniurie or perfuit of onye personis, bot to haife levit vnder Godis peax and our fouerane lordis: And thair, be way of hamefuckin and conuocatioun of our fouerane lordis liegis, as said is, violentlie and forceablie brak vp the duris of the said duelling-hous, enterit thairin be way of deid, and pat violent handis in the said Issobellis persoun, tuke hir captiue, rest, reveischit and tuke hir away with him to his place of Craighous; quhair he detenit hir, quhill his Maiestie, being vpoun the feildis, accompaneit with Johne Erle of Mar, Sir Johne Ramsay and diuerse vtheris, his Maiesteis domestik serwandis, heiring of the committing of sik ane horribill fact, directit the saidis Johne Erle of Mar, Sir Johne Ramsay and diuerse vtheris his hienes serwandis, to follow hir, and to releve hir furth of his handis; quha haifing cum to his place of Craighous, and requyring for hir relive, he refusit to grant the samyn, quhill thay manassit to bring his Maiestie about his said house, and raise ffyre thairin; and swa compellit him to releve hir: Committing thairbye, Rapt and Reveisching of the said Issobell, Hamefuckin, Convocatioun of our fouerane lordis liegis; and hes treffonablie vsurpit his hienes auctoritie, in taking and violent and forceabill detening the said Issobell his frie liege, expres contrair the lawis and Actis of Parliament; and he being airt and pairt thairof: Quhairbye he hes incurrit the panis, contenit in the said lawis and Actis of Parliament; quhilkis fuld be execute aganis him, with all rigour.

Continewit to the morne, the xiiij day of Januare.

[*Mr Williame Hairt and Mr Williame Borthuik, Justices-Deputes.*]

(Feb. 17.)—The quhilk day, Johne Kyncaid of Craighous, being enterit on pannell, appointit to heir and see our fouerane lordis Will declarit, in the quhilk he become, in ane Court of Justiciarie, haldin in the Tolbuith of Edinburgh, the xiiij day of Januar, the yeir of God I^m.Vj^c. and ane yeiris, be Mr Williame Borthuik, Justice-depute, for taking of Issobell Hutcheoune wedo, his hienes frie liege, furth of Johne Johnestoune, baillie of the Water of Leith hous thair, and taking of hir to his awin duelling-houfe thair; committit the xvij day of December lastwas:—Comperit Mr Williame Brois, seruitour to Alexander Maf-

ter of Elphingstone, Thesaurer to our souerane lord, and produceit ane Warrant direct to the Justice, Justice Clark and thair deputtis, contening his hienes Will; and defyrit the Justice to pronounce and declair the said Will, according thairto; and to cause insert the samyn in the buikis of Adiornall, to haif the strenth of ane Act and decreit thair of. The quhilk Warrant being red, the Justice pronounceit his hienes Will conforme to the tennour thair of, and ordanit the samyn to be insert and registrate in the buikis of Adiournall; to haife the strenth of ane act and decreit thair of; with executioun of horning and poinding, to be direct aganis the said Johne and his cawtioun, for fulfilling of the said Will; and the horning to be vpoun ane simple charge of sax dayes wairning; quhair of the tenour followis:

JAMES, be the grace of God, King of Scottis. To our Justice, Justice Clark and pair deputis, greeting. Forsamkill as Johne Kyncaid of Craighous, is becom in our will, for pe Reveisching of Iffobell Huchefoun, wedo: Thairfoir, We declair our will as followis, to wit; that the said Johne Kyncaid fall mak payment to ws and our Thesaurer, in our name, or to sik vtheris as our said Thesaurer fall appoynt and affigne, of the sowme of xxv^o (2500) merkis money of our realme: As also, that he fall delyuer to ws and our said Thesaurer his broune horse: Commanding heirbye 3ow our said Justice, Justice Clark and 3our deputis, to cause pronounce and declair pis our will aganis pe said Johne, judicially, and insert pir presentis in our buikis of Adiornall, to haif the strenth of ane act and decreit; that executioun of horning and poinding may be direct aganis pe said Johne, vpoun ane simple charge of sax dayes. Subscryuit with our hand, at Halyrudehous, the last day of Januar, 1601 3eiris.

(Sic subscribitur)

JAMES REX.

Slaughter.

[*Mr Williame Borthuik, Justice-Depute.*]

Jan. 22.—WALTER SCOT, James Scot and William Scot in Schoftanis, all brether to Robert Scot of Bowhill, and John Scot in Quholplaw, alias callit *Johne of Bonytoun*.

Comperit Mr Allane Hammiltoun, feruitour to Sir Archebald Naper of Edynbillie, knyght, and as procuratour for the said Sir Archebald, and produceit our souerane lordis lettres, deulie execute and indorsat, purchest be Alefoun Edmeiftoun the relict, and the said Sir Archebald Naper as fader, with the brether and remanent kyn and freindis of vmq^{le} Archebald Naper, Gudeman of the Wowmet;¹ to tak fouertie of Walter Scot, &c. that thay fuld haif comperit befor the Justice or his deputis, this day and place, in the hour of cause, and vnderlyne the law for the Slauchter of the said vmq^{le} Archebald;² be the quhilkis lettres the saidis personis ar denunceit our souerane lordis rebellis, and put to the horne. The said Mr Allane Hammiltoun protestit for releve of Johne Naper, 3ounger of

¹ Woolmot, near Edinburgh. ² George Birrel gives the following notice in his 'Diarey,' p. 52, 'The aucht of November (1600), Archebald Napier flane be fyve of the name of Scot and Thomas Crichtoun, ryding hame to his awen hous to the Wowmet.'

Merchinfoune, cawtioner for productione of the faidis lettres : quhairvpoune he askit actis and instrumentis.

[*Mr Williame Hairt, Justice-Depute.*]

Breaking into the Place of Boningtoun—Theft of Title Deeds, &c.

Mar. 31.—JAMES WOD, fear of Boningtoune, and Williame Wod of Latoune.

Dilatit of the breking of the Place of Boningtoune, &c.

PERSEWAR.

Mr Thomas Hammiltoun of Drumcarne, Aduocat to our souerane lord, for his hienes interes.

PRELOQUUTOURIS for James Wod, Mr Johne Ruffell, Mr Alexander King, Mr Laurence M^cGill, Capitan Andro Gray, Robert Gray.

The Aduocat produceit his Maiesteis Warrant, subscryuit with his hienes (hand,) ordaining him to infist in perfuit, &c. ; quhair of the tennour followis.

REX,

MR THOMAS HAMMILTOUNE of Drumcarne, our Aduocat, We greit 3ow weill. It is our will, and We command 3ow, that eftir pe sycht heirof, 3e compeir before our Justice or his deputis, in our Tolbuith of Edinburgh, the last day of March instant, in pe hour of caus ; and infist in perfuit of James Wod, fear of Boningtoune, and Williame Wod of Latoune, tane and dilatit of breking of pe Place of Boningtoun, and of pe treffonabill and thifteous steilling and away-taking furth pairof, of certane ewidentis, writtis and pleneiffing, pertening to Patrik Wod, eldar of Boningtoune, and to pe Lady Vlane :¹ As also, for contravening of pe Actis of Parliament in heiring of Mefs ;² and refsetting of Lueis,³ ane Seminarie Preift : ffor pe quhilk thir presentis falbe 3our Warrant. Subscryuit with our hand, Att Halyrudhous, the last day of March, 1601. (Sic subscribitur) JAMES R.

Thairefter, the said Mr Thomas Hammiltoune produceit the Dittay following.

DITTAY against JAMES WOD and WILLIAME WOD.

JAMES WOD, fear of Boningtoun, and WILLIAME WOD of Latoun ; Ye ar indytit and accusit : fforfamekill, as it is statute and ordenit be our souerane lordis Actis of Parliament, and speciallie, be ane Act maid in his hienes Parliament, hauldin and begun at Edinburgh, the xxix day of Julij I^m.V^c. lxxxvij yeiris, that incaice it sal happin ony landit men to be lauchfullie and ordourlie convict of the crymes of Thift, Refsett thairof or Stouth-reiff, in tyme cuming, thay fall incur the cryme and payne of Treffoune ; that is to say, tinfall of lyffe, landis and guidis ; as the said Act at mair lenth beris : And trew it is, that ye and ather⁴ of yow, being landit gentilmen, accompaneit with Thomas Daw, smyth in Brechin, Alexander Daw, in Carrestoun, his brother, and vtheris your complices, laitlie, vpoun the xvj day of March instant, came, vnder fylence and cloud of nycht, fra the citie of Brechin, to the Place of Boningtoun, pertening to Patrik Wod, eldar of Boningtoun, fader to yow the said James ; quhair Alexander Daw schott the baill 3ettis⁵ of the said place, and preiffit⁶ to pryise⁷ the

¹ A strange corruption, for Ulysses-haven, in the shire of Forfar. ² There is no notice of this branch of the Dittay having been insisted on, and no farther notice is taken. *Birrel* says, in his 'Diarey,' p. 54, 'The last day of Marche, James Wood of Bonnytown and his guid-brother Williame Wood tholit ane Affyze for being at the Mefs in Andro Napier's hous ; but continewit the executioun.' ³ Name left blank. ⁴ Either, each. ⁵ Shot or unbolted the bars and bolts, or other fastenings, of the gates. ⁶ Made a strenuous endeavour. ⁷ To prize or wrench open by means of any lever, such as a 'pinch' or crow-bar, &c.

irne 3ett thairof, and to enter thairin perforce: And becaus ye could nocht pryise the said irne 3ett, ye pryfit vp ane stanchell¹ of ane laich volt windok,² and enterit thairby to the said place: And efter your entrie, ye opnit the haill duris, and schot the lokis of all the kistis³ within the said place, and speciallie of the Chartour kist, standing in the chalmer of dace⁴ of the said place, perteing to your said fader; ffurth of the quhilk ye treffonablie (and) thifteoullie stall, concealit, reffett, stouthfullie reft, and away-tuik, the haill evidentis being thairin; and findrie vther writtis furth of ane vther kist, within the Galrie of the said place, and opnit the haill remanent kistis and cofferis being thairin; ffurth of the quhilkis lykewyse, ye treffonablie and thifteoullie stall, stouthfullie reft, reffett and away-tuik nyne pair of scheitis, foure buird-clathis,⁵ twa dosone and twa of feruiettis,⁶ ane pair of blankettis of fustiane, and ane peace of vnbleichit linning claith: And efter that the haill kistis wer opnit, and that ye wer paking vp the writtis and plenneiffing foirsaid, within the saidis buird-claithis, Matho Wod in Croftis, James Wod his sone, and Dauid, ane rynner boy to the Maister of Ogilvie, came to the Place of Boningtoun to yow, and helpit to pak vp the graith: Lykeas, ye the said Williame Wod of Latoune, with Matho Wod, James Wod and Dauid, and ilkane of yow, thane thifteoullie convoyit away and bure vpoun thair bakis, the haill plenneiffing aboue writtin, writtis and evidentis, togidder with ane lytill coffer with writtis, pertening to the Lady Vfane, furth of the said Place of Boningtoun, towardis the Place of Boschene; quhair ye wes reffett be Johne Ogilvie, seruand to the Maister of Ogilvie, and be yow the said James Wod, fear of Boningtoun, haifing borrowit the said Place of Boschene to that purpois: And vpoun the Thurisday thaireftir, being the xix day of this instant, ye thifteoullie transportit and convoyit the saidis evidentis, writtis and plenneiffing, fra the said Place of Boschen to the Place of Inchtur; quhair ye the said James Wod, be your selff, and vtheris of your causing, reffett the famin: And fwa, ye and ather of yow ar art and pairt of the thifteous breking of the said Place of Boningtoun, and of the treffonabill and thifteous steiling, concealing, away-taking and stouth-reiff, furth thairof, of the plenneiffing, writtis and evidentis aboue writtin, pertening to the said Patrik Wod of Boningtoun, fader to yow the said James, and to the said Lady Vfane; and of the reffett thairof: Of the quhilkis crymes, ye, being landit gentilmen, and being ordourlie and lauchfullie convict, ye and ather of yow hes incurrit the cryme and pane of Treffoune, viz. tinfall⁷ of lyffe, landis and guidis: To the takin⁸ that ye and ather of yow ar airt and pairt of the saidis crymes, ye haif confest the famin be your Depositionis; as the famin, subscryuit be your handis, beris.

The famin day, the Laird of Latoune, efter reding of the Dittay producit be the Aduocat, declarit that he wald becum in the Kingis Maiesteis Will for the famin: Quhairvpoun the said Mr Thomas Hammiltoun askit instrumentis.

The parteis, requiring that this mater mycht continew to the morne, THE JUSTICE repellis, and ordanis proces.

The preloquitouris for James Wod defyrit that thay may haif licence to propone declinatouris aganis ony Affessour that he fall speir att.—It is alledgeit be the said James Wod and his preloquitouris, that na proces can be led aganis the said James; becaus he is challengeit vpoun crymes of Treffoune, and that he is nocht summond vpoun fourtie dayes, to vnderly the law for the said cryme, quhilk aucht to be; in respect he is nather tane *in flagranti crimine*, nor putt

¹ Stancheon.

² The window of a low vault or cellar.

³ Chests.

⁴ The presence

chamber, or room of state. Properly speaking, it is that part of a hall which was raised higher than the rest; the place of honour. ⁵ *Chawmer o' dais* is still used to signify a parlour, in remote parts of the country.

⁶ Table-cloths.

Servets, towels, or table napkins.

Loss; from the

verb to *tyne*, or lose.

⁸ In token, evidence, or proof.

to the horne.—To the quhilk it is anfuerit, that it is nocht necessar to warn him vpoun fourtie dayes, becaus he is accusat of Treffoune, and brocht fra the Kingis waird to the bar.

THE JUSTICE findis proces, and repellis the alledgeance; quhairvpoun my Lord Aduocat askit instrumentis.

It is alledgeit, that the Dittay is nawyis relevant, becaus it is disconforme to the Act of Parliament; becaus the Act of Parliament is anent commoun thift, reffett of thift, or ftouth-reiff; and trew it is, that the propositioun of the Dittay is nocht fa fett doun, but only vpoun simpill thift; quhair that the wordis of the Act of Parliament is extendit only to commoun thift, commoun reffett, commoun ftouth and reiff.—The Aduocat anfueris, that the alledgeance aucht to be repellit, in respect of the Actis of Parliament and Dittay; speciallie, feing thair is na thing obietit aganis the tua poyntis of Dittay, anentis the reffett of thift and ftouth-reiff, quhilkis ar baith feuerallie (*separately*) releuant.—It is anfuerit be the defender, that thay wordis of the Act of Parliament, anent reffett of thift, ftouth-reiff, man (*must*) be *eiusdem nature* with thift; that is to say, commoun thift: And forder, the haille strenth of this Dittay, fa far as is qualefeit aganis Bonningtoun, is qualefeit vpoun the alledgeit actuall deid of thift, alledgeit committit be him, quhilk of all necessitie man be, be the Act of Parliament, commoun.—The Aduocat anfueris, that the wordis of the Act of Parliament ar confaut dif, and ewerie poynt thairof is relevant, lyke as the pannell is perfewit for the thift, reffett of thift and ftouth-reiff.—It is anfuerit be the pannell, that that word ‘commoun’ is vnderstand to be repetit in ewerie pairt of the dif ; and as simpill thift is nocht Treffoune, *multo minus* is simpill reffett or simpill ftouth-reiff, Treasoune; for thay man be *eiusdem nature*.—The Aduocat alledgis, that the said alledgeance aucht to be repellit, in respect of the wordis of the Act of Parliament.

(2.) Forder, it is alledgeit be the defender, that the Dittay is nocht relevant, becaus it condiscendis nocht quhat landis the excipient hes; for, without it wer speciallie condiscendit vpoun, the Dittay can nawyis be relevant to infer Treffoune: And forder, gif the Aduocat wald condiscend, we mycht and wald allege, that gif ony Infeftment the defender had of thay landis, he wes, lang before the alledgeit committing of the cryme lybellit, denudit of thais landis, be Decreit of Redemptioun obtenit att the instance of his fader; and we declair that the alledgeance is only proponit to elide that pairt of the lybell concerning Treffoune; vnder protestatioun, that he nawyis grantis the cryme lybellit.—The Aduocat anfueris, that the alledgeance aucht to be repellit, in respect of the Dittay; ffor gif he haif land, the conclusioun anent the Treffoune standis relevant; and gif he want land, the rest of the Dittay will tak his lyffe and all his gudis.—It is anfuerit,

that my Lord Aduocat man say *positive*, that he is landit, and condiscend quhat land he hes ; ffor it man be lybellit and cognoscit be Affyise, quhidder he be ane landit gentilman or nocht ; and ane presumption can nocht be put to ane Affyise, bot (*without*) ane affirmatioun and ane speciall condiscending vpoun quhat land he hes ; and the partie man be hard, to propone his defenss aganis the famin.—The Aduocat repetis his former anfuer.

(3.) Forder, of all necessitie, the Aduocat man condiscend vpoun the names of the landis, becaus gif he wald condiscend, that same condiscending wald be ane sufficient exceptioun to the defender, to purge him of the haille Dittay ; be reasoun that the eidentis, alledgeit stollin, will be fund to be the eidentis of the landis quhairof he salbe condiscendit to be heretour ; and swa, can nawyis be thift ; for ane man can newir be callit and convict of thift, for steilling of his proper guidis ; that is contrar to the definitioun of thift, quhilk is *contrectatio rei aliene, invito domino*.—The Aduocat repetis his former anfuer and the Dittay.

(4.) ITEM, it is allegeit that the Dittay is nocht relevant, in respect that it condiscendis nocht, quhat eidentis and of quhat landis thay ar of ; quhilk man be condiscendit vpoun, in respect the defender wald sufficientlie purge the haille Dittay and away-taking thairof, be schawing that the saidis eidentis wer his awin proper eidentis.—The Aduocat repetis the Dittay for anfuer.

(5.) ITEM, it is forder allegeit, that this Dittay can nocht be putt to the knowledge of ane Affyse, becaus it man ressaue ane Ciuile precognitioun, quhilk is nocht¹—The Aduocat anfueris, that thair is na Ciuitie in Trefoun, and the allegiance mereitis na anfuer.—The defender sayis, he will say na mare at this tyme.

(6.) ITEM, anent the *seruiettis, non relevat, et est res parvi momenti* ; and *per se* can work na thing.

INTERLOCUTOR of Relevancy. THE Justice findis the Dittay relevant ; and remittis the famin to the tryell of ane Inqueist, nochtwithstanding of the haille alledgeances aboue writtin, proponit for the pannell ; and to be verefeit to the Inqueist, as accordis.

Vpoun the quhilk Interloquoutour, the Aduocat askit instrumentis.

ASSISA.

Sir Patrick Creychtoun of Strathuird,	Mr Patrik Balfoure of Pitcullocht, Johne Mathefoune of Brochtoune, Andro Paterfoune of Leuchrie, Clement Kyncaid of the Coittis,
Patrik Hepburne of Riccartoune, James Richesfoune of Smetoune, Alexander Fairlie of Braid,	
Patrik Levingtoun of Saltcoittis, Johne Houstoune of Lany, Patrik Johnestoune of Elphing-	
George Lyle of Stanypeth, Johne Fairlie of Comeistoune, ftoune.	
Mr Patrik Hepburne of Smetoune, Williame Congiltoune of that Ilk,	

The Aduocat askit instrumentis of the swering of the Affyse ; and that my Lord Justice will nocht ressaue the Laird of Latoune in will ; bot will put him to ane Affyse. The Aduocat (also) askit instrumentis of the reding of the Dittay to

¹ Left blank.

the Affyse ; and of the production of the Act of Parliament ; and of the production of the foure Depositionis, maid and subscriuit be the pannell ; beirand the haill contentis of the Dittay.

The Defender acceptis the Dittay, the haill verificatiounis and Judgeis Interloquutour, and repetis the haill allegeancis proponit ofbefore, to be cognoscit be the Affyse ; And alledgis, to the Affyis, that seing the Act of Parliament is ane pairt of the Dittay, and the fundament and ground of the famin ; and seing, the haill Dittay and verificatioun consistis vpoun thift ; in caise the Affyse find nocht the pannell gilty of Commoun Thift, protestis, that he be chargeit of the said Dittay and Act of Parliament ; and ane cryme or poynt of Thift, of the law and practik of this realme, man newir be estemit Commoun Thift ; and ane persoun can newir be convict of Commoun Thift, for ony ane alledgeit poynt or cryme ; ffor he, of the law and practik of the realme, is estemit ane Commoun theif, quha is convict of thre feuerall poyntis and crymis of Thift ; quhilk is nather qualefeit in the Dittay nor verifeit. And forder, the Defender takis instrumentis, that thair is na thing producit to verifie him to be ane landit gentleman ; and thairfore, of all necessitie, man be clangeit of all poyntis of Tressoun ; ffor except it had been relevantlie qualifeit in the Dittay, and sufficientlie instructit, that the Defender wer ane landit gentilman, Tressoun could nather be inferrit nor concludit vpoun that dittay. Forder, the defender alledgis, that the remanent of the crymes contenit in the said Dittay, for the alledgit away-taking of the eidentis and the Confessioun maid be him of the famin, is na cryme of Thift ; haifand consideratioun, that the eidentis is confessit to appertene to his fader, to quhome he is eldest sone and apperand air ; and the away-taking of his faderis eidentis, can newir import Thift ; haifing consideratioun, that his fader, quhom-fra the eidentis is alledgeit tane, is na persewar nor complenar ; and thair is na actioun that can be compitent for the awaytaking thairof, bot¹ only ane simple actioun of spuilzie ; ffor that wer ane dangerous preparatiue² to the haill realme of Scotland, that quhen ane sone offendis his fader, ather be alledgeit away-taking of his eidentis, horse or vther graith, the fader newir complenand nor fyndand falt with the doing of the said deid, that the committeris falbe convict of Tressoun or Thift, at the Aduocatis instance.

To the quhilk, it is anfuerit be the Aduocat, that the Affyse aucht nawyis (to) respect the alledgeance proponit, in safar as this Dittay is confaut aganis William Wod of Latoun ; becaus he nather proponis nor adheris to itt, bot hes ratifeit his Depositionis, and hes becum in his Maiesteis will, for the haill poyntis of the Dittay ; in respect quhairof, in cais the Affyis onywyis clange,³ protestis for Wilful error. And in safar as the alledgeance is proponit for Boningtoun,

¹ Unless, excepting.

² Precedent, example.

³ Cleanse, or acquit.

the fyrst pairt, anent the Commoun Thift, nawyis concernis the Affyis, bot the dittay foundit vpoun the Thift, Reflett of Thift and Stouthreiff, speciallie sett doun in the Dittay, in ewerie speciall poynt thairof, is fund relevant be my Lord Justice; and the confideratioun of the relevancie of the famin, only pertenis to the Judge, and nawyis to the Affyis, quhais dewtie is only to try, declair and determine, gif the fact and deid contenit in the Dittay to haif bene done and committit be the Pannell; and gif thay be gilty thairof, thair giltyenes of the quhilk Dittay being manifest, be thair awin Depofitiounis, fubfcriuit with thair handis and red in thair prefens before the Affyis, thay nor nane of thame can pretend ony ignorance thairof: And quhair it is alledgeit, that it is nocht verifeit that the faid James Wod is ane landit gentilman, that aucht to be repellit, in respect of the notorietie that he is eldeft fone and apperand air to the Laird of Boningtoun, and fear of the faid lewing; as his fubfcriptioun of his awin Depofitioun, producit, beris: Nether is it neceffar that the Aduocat, perfeward for his Maieftis interes, fal verifie, be writt or production of the pannellis euidentis, that he is ane landit gentilman; quhilk wer impossibill, the writtis being in the defenderis awin handis; quhilk, poffiblie, can nocht be prefumit to be habill to be recoverit be the perfewar; bot in crymes of Treffoun, fyve yeiris poffeffioun of heretage, be the rebell, is *loco tituli*, and makis the rebell to be repute to haif bene heretabill proprietor of the faidis landis, and the heretabill rycht of the famin to befall to the King, be fforfaltour. And it is of veritie, that the defender hes poffeft the Landis of Birnie, as heretabill proprietour thairof, be the fpace foirfaid: in respect of the notorietie quhair of, and of his awin affirmatioune foirfaid, it being manifest and notour that he is ane landit gentilman, and that he hes committit the haill crymes contenit in the dittay, as is cleirly verifeit be the Depofitiounis producit, and Latounis Confessioun, and becuming in will; in caife that the Affyfe clange him of ony of the pointis libellit, protestis for Wilfull error aganis the faid Affyfouris, and all payne that can follow thairvpone. As to the laft pairt of the alledgeance, that the fader, to quhome the euidentis and geir pertenis, perfewis nocht, and that the fact is committit be his eldeft fone and apperand air; anfueris, that albeit the partie grewit keipis fylence and perfew nocht, the Aduocat hes fufficient interes, be exprefs Act of Parliament, to perfew all crymes, without concurrence of the partie: Lykeas, the perfewar acceptis that pairt of the alledgeance, that the deid contenit in the Dittay is committit be the Laird of Boningtounis eldeft fone, quhilk beris ane judiciall Confessioun of the treffonabill fact contenit in the Dittay, and fand be interloquutour of the Judge to be ane treffonabill cryme.

It is anfuerit, that the Dittay and ewerie heid thairof aucht to be verifeit; and quhair it is alledgeit, that he man be perfewmit ane landit gentilman, becaus he

subfcryves 'ffear of Boningtoun,' that argument can work na thing, becaus na thing can mak ane man ffear, bot Chartour and feafing ; and forder, gif that may verifie, *ergo*, it is confest be the perfewar, that the eidentis tane away ar the defenderis awin proper rychtis, and fa can nocht be Thift : As to the Act of Parliament, the famin militatis na thing in this caice, ffor in the caice of the Act of Parliament, it is the cryme that makis the man tratour ; and this cryme *pe, et sua natura* is na Treffoun, except it be committit be ane landit gentilman ; quhilk man (*must*) be verifeit.

VERDICT of the Affyse.

QUHILKIS perfounis of Affyis, being chofin, and the faid JAMES WOD, fear of Boningtoun, and WILLIAM WOD of Latoune, being accufit oppinlie in judgment, be reding of pe faid Dittay, &c., thay removit altogidder furth of Court, to the Counfal hous of the faid Tolbuith ; quhair thay, being convenit, electit and chufe the faid James Rychardsfoune of Smetoune Chancillar, and reasonit and votit vpoun the poyntis of the faid Dittay ; and efter lang deliberatioun, being throwchlie auisit thairwith, thay reenterit agane in Court, and thair, be the mouth of the faid James Rychardsfoune Chancillar, all in ane voce, ffand, pronunceit and declarit the faid *Willame Wod of Latoune* to be ffylit, culpabill and convict of the Dittay aboue writtin, and haill crymes thairin contenit ; in respect of his Depofitiounis, and that he become in his Maiefteis Will thairfore : AND als, the faid perfounes of Affyfe, for the maift pairt, be the mouth of the faid James Rychardsfoun of Smetoun Chancillar, ffand, pronunceit and declarit the faid James Wod, ffear of Boningtoun (as ffear of Boningtoun, quhilk he confest to, be his awin fubfcriptione at his Depofitiounis) to be ffylit, culpabill and convict of airt and pairt of the thifteous breking of the Place of Boningtoune, entering thairin perforce, accompaneit with the perfounes contenit in the faid Dittay, and of opning of the haill duris and lokis of all the kiftis within the faid Place ; and speciallie, of the Chartour-kift, ffanding in the chalmer of daice of the faid Place, pertening to Patrik Wod of Boningtoun his fader ; and of the thifteous fteilling, conceling, ftouthfullie reifing, reffetting and away-taking furth of the faid kift of the haill eidentis being thairin, and findrie vther writtis furth of ane vther kift, ffanding within the galrie of the faid place ; and opning of the haill remanent cofferis and kiftis being within the faid place ; and of the thifteous fteilling, ftouthfullie reifing, reffetting and away-taking furth thairof, of nyne pair of fcheitis, foure burdclathis, twa dofone and twa feruiettis, ane pair of blankettis of fufteane, and ane piece of vnbleachit linning claith, pertening to the auld Laird of Boningtoune ; and of ane coffer with eidentis, pertening to the Lady Vfane ; committit vpoun the xvj day of March instant, vnder fylence and cloud of nycht.

' Hary Stewart of Craigiehall and George Dowglas of Langnudrie, americiat in pe pane of ane hundreth markis' each ; for not appearing ' to haif pafst vpoun the faid Affyfe.'

SENTENCE. Apr. 1. THE quhilk day, JAMES WOD, fear of Boningtoune, and WILLIAME WOD of Latoune, being presentit on pannell, to heir and fie dome pronunceit aganis thame, as thay that war lawfullie and ordourlie convict and fund guiltie, be ane Affyis, in ane Court of Justiciarie, baldin in the Tolbuith of Edr the laft day of Marche laftbypafst, be the faid Justice-depute, of airt and pairt of the thifteous breking of the place of Boningtoune, &c. as at lenth is contenit in thair Convictionis : Thairfoir, the faid Justice-Depute, according to the tennour of the Act of Parliament, hes fund, be the Convictione of the faid James Wod, as feare of Boningtoune, and the faid Williame Wod of Latoune, be ane Affyis, of the crymes of thift foirfaidis, that thay and ather of thame hes incurrit the cryme and pane of Treffoune, viz. tynfall of lyffe, landis and guidis : ffor the quhilk caufe, he, be the mouth of Robert

Galbraith, dempftar of Court, hes Ordanit and Ordanis thame and ather of thame to be tane to ane gibbet, standand be-eist the mercat-croce of Ed^r, and thairvpoune to be hangit, quhill thay be deid:¹ And all thair landis, heritageis, takis, fleddingis, rowmes, possessionis, coirnis, cattell, guidis and geir to be forfaitit and inbrocht to our fouerane lordis vse, as convict of the saidis crymes.²

[*Mr Williame Borthuik, Justice-Depute.*]

Breaking into the Place of Bonningtoun—Stealing Title Deeds, &c.

Apr. 3.—THOMAS DAW, smyth in Brechin, and Alexander Daw, smyth, his brother, in Correstoune.

Dilatit of airt and pairt of the thifteous Steiling, conceling, resfetting and away-taking of certain eidentis and writtis, with pleneiffing, furth of the Place of Bonningtoun;³ with certane pleneiffing, scheittis, blankettis and buirdclathis; and ane coffer, with writtis, pertening to the Lady Vlane.

The Aduocat takis instrumentis of the Confessioun of the pannell, of thair being at breking of the Place of Boningtoun; and that Thomas Daw gat thre crownis, and Alexander Daw gat ane croune, for thair panis: And protesting, gif the Assyis clenge, for Wilfull errour: Repeittis lykewyis the Depositionis of Latoune and Boningtoun; quhilkis ar produceit to the Assyis.

VERDICT. The Assyis,⁴ be the mouth of Thomas Somervell, merchand in Ed^r, chancellor, fand, pronunceit and declarit the saidis Thomas Daw and Alex^r Daw to be ffylit, culpabill and convict of airt and pairt of the thifteous steling, conceling, resfetting and away-taking of the saidis writtis and eidentis, &c.

May 7.—The Justice-depute, be the mouth of Robert Galbraith, Dempfstar, ordanit the said ALEXANDER DAW to be tane to the gibbet on the Castle-hill, and thairvpoun to be hangit⁵ quhill he be deid; and all his movabill guidis to be escheit and inbrocht to our fouerane lordis vse, as Convict of the saidis crymes.

¹ It is probable that great interest was made for the young Laird of Bonningtoun. The sentence was not carried into execution till Apr. 27; under which date, Robert Birrell records as follows:—‘James Wood of Bonnytoun beheidit at the croffe, at 6 houres in the morneing, for breaking the Place of Bonnytoun, quhilk appertenit to hes father, and sould haif beine hes awen.’

² Since the above was written, the Editor has found the following interesting notice:—‘UPON Moun-day pe 27 of Aprile (1601), THE LAIRD OF BONYTOUN was beheaded at pe Croffe of Edinburgh, betwixt fix and sevin in the morning, be a Commission from the King, directed to pe Bailliffes of Edinburgh, tymously in the morning; for howbeit great intercession was made be Huntly, Erroll, Hume, and operis, yett pe Ministers were instant with the King, to have a prooffe of his sincerity. He died ane obstinat Papist, ever looking for pardon till the last gasp. He pretended he suffered for the Roman Catholic Religion, but it was noe point of his Dytty; only the steeling of his father’s evidences and writtes was layed to his charge. LATOUN gatt Remission, be pe moyen of Courtearis.’—*Calderwood’s Church Hist.* MS. Adv. Library.

³ In an abstract of their Dittay, which is inserted, it is stated, that they, ‘accumpaneit with the Wodis,’ &c. ‘vnder sylence and cloude of nycht, come to pe Place of Boningtoun, and pair thifteouslie clam ye barnekyn wall with ane ladder,’ &c. ⁴ Composed of ‘merchandis’ and ‘burgeffis’ of Edinburgh. ⁵ Birrell says, ‘The 7 of Maij tua men wer hangit on the Castell Hill, the ane callit Williame Crichtoun, for thift; and the uther, Alexander Smythe, dager-maker, for opining of the lockis to the Laird of Bonytoun.’

Perjury — Hearing of Mass, &c.

Apr. 24.—MR WILLIAME BARCLAY, brother to Sir Patrik Barclay of Towie, (Tollie) knycht.

Dilatit of Periurie; and Heiring of Mefs, contrair the Actis of Parliament.

Comperit Daid Hairt, feruitour to my lord Thesaurer, and producit the lettres deulie execute and indorfat, purchest be Mr Thomas Hammiltoune, his hienes aduocat, aganis Mr Williame Barclay, for the crymes within contenit. 'Continewit *in cras*.'

[*Mr Williame Hairt, Justice-Depute.*]

Apr. 25.—DITTAY. THAT quhair, it is expresse provydit, statute and declarit, be Act of Parliament, maid in the tyme of his hienes derrest mother, vmq^{le} Marie Quene of Scottis, that the panis of Periurie falbe to the personis committeris thair of, confiscatioun of all thair guidis movabill, wairding of thair personis for yeir and day, and langer, induring hir Maiesteis will; and to be infamous personis, never abill to bruik office, honour, dignitie nor benefice, in tyme to cum: And als, it is statute and ordanit, be Act of Parliament, maid in his hienes Parliament, baldin and begun at Ed^r the viij day of Junij the yeir of God J^m.V^o.lxxxxiiij yeiris, that in all tyme cuming, all Wilfull Heraris of Mefs, and conceillaris of the samyn, be execute to the death; and thair guidis and geir escheit to our souerane lordis vse, sa fone as thay fall be fund gyltie and convict thair of, or declarit fugitiue for the samyn, befor the Justice-generall and his deputtis, or the lordis of his hienes Privie Counsale; as the saidis Actis, at mair lenth beris. AND trew it is, that the said Mr Williame Barclay, haifing, in pe moneth of lastbypast, sworne and subscryuit befor the Presbyterie of Ed^r that he wes of the Religioune presentie profest within this realme; nochtwithstanding thair of, vpoun the xx and xxj dayes of Marche lastbypast, he assistit and hard twa Messis, quhilkis war said be Mr Alex^r M^cQubirrie, ane Jesueit Preist, within Andro Naperis duelling house in Ed^r; be the heiring quhair of, and assistit thairto, he hes profest and sworne the contrair Religioune; and sua, hes committit the cryme of Periurie, and incurrit the pane thair of abouewrittin, contenit in the said Act of Parliament: Lyke as, he, be the wilfull heiring of pe saidis twa feuerall messis, at the twa feuerall tymes *respective* abouewrittin, hes incurrit the panis contenit in the vther Act of Parliament, maid anent Wilfull heraris of Mefs, viz. the pane of death and confiscatioun of all thair movabill guidis.

The said Mr Williame refusit to abyde the tryell of ane Affyis; bot become in his Maiesteis Will for the samyn crymes: Quhairvpoun the said Mr Thomas Hammiltoune askit Actis and instrumentis.

[*Mr Williame Borthuik, Justice-Depute.*]

May 2.—The said Justice-depute producit his Maiesteis Warrant, concerning his hienes Will; quhilk he pronunceit and oppinlie red in jugement; quhair of the tennour followis.

JAMES, be pe grace of God, King of Scottis. To our Justice, Justice Clark and his deputis, greting: fforfamekill as Mr Williame Barclay, bropr to pe Laird of Towie, is becum in our will, in ane Justice Court, baldin in our Tolbuith of Ed^r, vpoun pe xxv day of Apryle lastbypast, for Periurie, and hering of Mefs, contrair pe tennour of our Actis of Parliament: Thairfoir, We declair our will, as followis, to wit: ffor pe Periurie, We ordane pe said Mr Williame to be declarit Infamous, and nocht habill, now, to bruik office, honour, dignitie or benefice, within our realme: And for pe hering of Mefs, we decerne and ordaine him to be Baneist our realme, during all pe dayis of his lyfetime, and never to returne within pe samyn, vnles, be satisfacioun of pe Kirk, he obtene our speciall Licence to pat effect; vn-

der þe pane of deid : And that he remoue or depairt furth of our realme, within fourtie dayis nixt efter his libertie furth of his present waird. Commanding, heirfoir, 3ow, our said Justice, Justice Clark and 3our deputtis, to pronunce and deliuer þis our will, iudiciallie, aganis þe said Mr Williame : And pair-estir, cause commit him to waird agane, within our Castell of Ed^r, pair to remane quhill the forder knowledge of our will and plesour towardis him. As 3e will anfuer to ws pairvpoune : Quhairanent þir presentis falbe 3our Warrant. Subscriuit with our hand, At Dalkeith, the last day of Apryle, and of our regne þe xxxiiij 3eir, 1601. (Sic subscribitur) JAMES REX.

Quhilk being oppinlie red and declarit in judgment, the Justice-depute interponit his authoritie thairto.

[*Mr Williame Haert, Justice-Depute.*]

Exhibiting the King's Portrait, on the Public Gibbet, &c.

Apr. 25.—ARCHEBALD CORNUALL, ane of the toune officiaris of Edinburgh.

[THE following Trial is perhaps unparalleled in the Annals of Criminal Jurisprudence, in any country ; and cannot be read without exciting feelings of the utmost disgust and indignation, at the cold-hearted and vindictive, nay, sanguinary spirit, which dictated the pronouncing and carrying into execution of so awful a sentence, for an offence of so trivial a nature, probably originating in pure accident or inadvertency, or at most in a foolish jest of the officer, who would, no doubt, for his own interest, as well as that of his employer, in making a sale, endeavour to dispose of the picture to the best advantage. The Dittay only accused him of '*preiffing* to haif hung the same' upon the gallows ; but that he was prevented from doing so by the people.

It is evident that the King instigated these disgraceful proceedings ; and it is equally certain, that the unhappy victim of this most tyrannical act suffered death accordingly. The '*Affise*' bears all the marks of a selected '*set of worthless and pluckless wretches.*' No less than *eight* of their number are Tailors, who have at no time been famed for extraordinary firmness or independence. The voracious Robert Birrel gives the following account of the matter. '*The same day (Apr. 27), Archibald Cornell, toune officer, hangit at the Croffe, and hung on the gallows 24 houres : And the caus quhairfore he wes hangit : he being an unmerciful, greidie creatur, he poyndit ane honest manis hous, and amongft the rest, he poyndit the King and Queins picturis ; and quhen he came to the croffe to compryse the same, he hung thame up upone twa naillis on the same gallows, to be compryfit ; and thai being sene, word 3ead to the King and Queine, quhairupone he wes apprehendit and hangit.*' If Birrell is correct with regard to date, (which it would appear he is,) it makes the matter still worse, so far as the King is concerned ; for it puts violent and sudden rage out of the question. The '*treffonabill fact*' took place upon the 15th day of April ; so that the trial, condemnation, and execution must have proceeded on cruel, deliberate, and malicious determination : The proceedings before the Justiciar are dated Apr. 25 ; and the poor town officer did not suffer death till Apr. 27.

Unfortunately for the character of King James VI. this is by no means a solitary instance,—witness the Cases of John Dickson, in Lyne, Aug. 3, 1596 ; Francis Tennent, Oct. 10, 1600 ; Thomas Ross, son of Ross of Craigie, in 1618 (executed Sept. 10), and many others. Another very remarkable instance of the arbitrary and despotic character of James, in the month of October the same year, is given in the new and accurate edition of Lord Hailes' Annals, 8vo, Edinburgh, 1829, Vol. iii. p. 106, and which is reprinted here, in illustration of the above remarks. The object of this latter act of tyranny is abundantly clear. Mr Peter Narne was a victim offered up to the English nation, at a time when the King was plotting with Cecil, &c. to secure his succession to the throne of Elizabeth ; as a foretaste, doubtless, of the protection he would afford them against every encroachment of his Scottish subjects. There is no doubt that this unfortunate man suffered, for his supposed *intention to murder* ;

as the torture was directed to be used, till he should confess; and then the Judge was directed to pronounce sentence of death!

So extraordinary is this Case of Archibald Cornwall, in all its bearings, that the Editor deemed it requisite to investigate the matter, as minutely as his opportunities permitted. The result of these inquiries are appended, and left to the reader's consideration, without farther observations.]

Dilatit of the ignominious Dishonouring and Defaming of his Maiestie, in taking of his Portratour, and laying of the famyn and fetting thair of to the stowpis and vpberaris of the gibbet, preiffing to hing vp the famyn thairvpoun.

PERSEWAR, Mr Thomas Hammiltoun, Aduocat to our Souerane Lorde.

ASSISA.

Patrick Acarfane, wrytter,	Johne Blak, tailzeour thair,	Edmond Smyth, tailzeour ('in
Williame Tailzeour, deacon of the	Johne Horne, fruitman in Edr,	the Cannogait,')
tailzeouris in the Cannogait,	Johne Pillons, cordiner thair,	James Sympfoun, tailzeour thair,
Johne Rankene, tailzeour, burges	James Aikman, tailzeour thair,	Williame Bauchop, wryter thair,
of Edinburghe,	David Bennet, tailzeour thair,	Alexander Lyell, skyner thair,
Patrick Somervell, burges thair,	Adame Carkettill, tailzeour thair,	Patrik M ^c Gregour, fruitman.

The Aduocat takis instrumentis of the Admissioun and fwering of the Assyis.

The Aduocat protestis for Wilful Errour, in case they acquitt; in respect of the notorietie of the deid, knawin to thameselfis.

The quhilk day, Archibald Corneuell, ane of the toune officeris of Edinburghe, being enterit on pannell, dilatit, accusit and persewit, be dittay, produceit be Mr Thomas Hammiltoun of Drumcarne, aduocat to our fouerane lord, for the trefsonabill and ignominious dishonouring and defaming, sa far as in him lay, of our fouerane lord the Kingis Maiestie, be taking of his hienes portratour to the public mercat place of this burghe, and thair schamefullie and wyildlie (*vilely*) fetting the famyn to the stowpis and vpbereris of the gibbet; and in mair, and manifest and trefsonabill contempt and disdane of his Maiestie, he stuid vp vpoun ane buird or furme, befyde the said gibbet, and cald ane naill thairin, sa heich as he culd reiche it, and listit vp his hienes portratour foirfaid, and held the famyn vpoun the gibbet, preiffing to haif hung the famyn thairon, and to haif left it thair, as ane ignominious spectacle to the haill world; gif he had nocht bene stayit, be the iust indignatioun of the haill people, minaffing to stane him to deid, and pulling him perforce fra the said gibbet, to stay his trefsonabill fact foirfaid; committit be him, vpoun the xv day of Apryle instant.

VERDICT. The Assyis, be the mouth of the said Johne Rankene, chancillar, ffand, pronounceit and declarit, for the maist pairt, the said Archebald Corneuell to be fylit, culpabill and convict of the trefsonabill fetting of his Maiesteis portract to the tramme of the gibbet; and presenting of the famin, to be hung heich vpoun ane nail infixt in the said gibbet.

SENTENCE. For the quhilk cause, the said Justice-depute, be the mouth of Robert Galbraith, dempfstar of the said Court, decernit and ordanit the said Archebald Corneuell to forfealt lyffe, lands and guidis, and to be tane to the said

gibbet, quhairvpoune he preiffit to hing his Maiesteis portratour, and thairon to be hangit quhill he be deid; and to hing thairvpoun, be the fpace of xxiiij houris, with ane paper on his foirheid, contening that vyild cryme committit be him.

(1.) NARRATIVE *taken from Wodrow's MSS.*¹

IN the said moneth of Aprile (1601), one of the officeris of Edr, having rowping at the Croce of Edr certane poindit geir, amang the quhillk the Kingis picture wes; and to the effect that the bred² and picture micht be the better sene (the officeris stand being hard befyde the gibbet) vndiscretlie and rafchellie the officer wes calling³ in ane naill in the gibbett, to haue hung vp the bred, as wes reportit, and yit hang not vp the famin, bot ceiffit, being admonischet be sum of the pepill standing by, that it wes not weill done to put vp ony naill to the effect foirfaid: Allwyfe, vpoun the said presumption, the officer wes challengit and put in wairde, within the tolbuith: And the Kingis Maiestie, being informit thair of, caufit examine certane witneffes thairvpoun; and thairefter the said Officer wes put to ane Affyse, and convict vpoun the said presumption; and dome gevin vpoun him, to be hangit xxiiij houris, with ane paper on his foirheid, declairing the said caus. Lyke as, he wes sua done with, vpoun the said xxvij of Aprile, about sax houris at evin; and sufferit to hing on the gibbet quhill the nixt day, at evin, at the same time: And thaireftir, the gibbet wes takin doun and brunt with fyre.

(2.) ACCOUNT *taken from Calderwood's MS. Church History.*

Apr. 27, 1601.—UPON the same Mounday, at sex houres at even, ane Officer of Edinburgh, named Archibald Cornwall, was hanged upon a gibbet, at pe Croffe of Edr. At pe rouping of some poynded gear, at pe Croffe of Edinburgh, finding a broad wherein was the King's picture, and standing hard beside the gibbett, undiscreitly and rashly was driveing in a nail in the gibbett to hing up the board, as was reported: but being admonished by some of pe people standing by, he ceased and hanged it not up: Alwayes, upon the same presumption, he was putt in waird, in the jayle. The King, being informed, caufed examine certaine witneffes; and thereafter, he was putt to ane Affise, convicted and condemned to be hanged, and to hing twentie four houres, with a paper on his forehead: which was done; and thairefter the gibbett was taken doun and burnt with fire.

(3.) EXTRACTS *from THE RECORDS of the Town Council of THE CITY OF EDINBURGH.*

Apr. 17, 1601.—FOR the honour and reverence thai aught to our foueran lord, his darrest spous and children; Statutes and ordanis, that nane of thair Maiesteis and graceis pictures and portraits be poyndit, rowppet or compryfet, for ony maner of caus, publictly or privatly, heirefter: Dischargeing thair officeris and feriandis of the sam and of thair offices in that pairt, vnder the payne of tynfall of thair said offices, and wairding of thair persounis for the spaice of twenty dayes.

(Apr. 22.)—The Bailleis, deyne of gild, thesaurer, and maist pairt of the Counfall being convenit, appoyntis George Todrig baillie, David Williamfoun and Patrik Sandelandis, to pas to his Maiestie, presentlie at Dalkeyth, and to inform his Maiestie of the trewth, anent the offence consauet be his Maiestie aganis Archibald Cornuell, officer, for the allegeit hinging of his Maiestie and spous picture at the gibbet, in ane rowping.

(May 1.)—Thomas Hammiltoun appointed in place of 'vmq^{le} Ar^d Cornuell.'

(4.) COMMISSION OF JUSTICIARY *to Robert Lord of Roxburgh, for the Torture, Trial and Execution of Mr Peter Narne.*

JAMES, be the grace of God, King of Scottis; To all and findrie our lieges and subditis, quhom-

¹ Wodrow's MSS. Adv. Library, Edinburgh, Vol. IX. Rob. III. 2, 9. ² Board; a painting on panel. ³ Driving.

ever it effeiris, to quhais knowlege thir our letters fall come, greeting. FORSAMEKLE as MR PETER NARNE, haveing maist traiterouslie devisit and conspyrit the Murther and destruction of Englishmen ; and for executioun of this vyld and abhominable fact, haveing trained thame within our realme, promissing unto thame to get thame advancen in credite and service with us ; and haveing brocht thame to the town of Kelso, he thair resolvit to have accomplishe his said vyld Murther ; and being in the actual executioun, he was, be the providence of God, stayed, the pur innocent strangeis relevit, and himself apprehendit, and is presentlie in handis. Quhilk vyld and detestable coynage and Conspiracie of an intendit and conspyrit Murther, being of so rare ane example and preparative, and carrying with it sa foull ane sclander and reproche to our natioun, giff the same be not accordingly tane order with and punisheit : And albeit, thair be na law maide againe practizars and Conspiratours of ane Murther, unexecute ; and that this fact, naikedlie considerit, will not appeir puneishable to the death ; yet We, haveing regaird to the circumstanceis thair of, with the interest quhilk it carryis to our service, and the sclander and reproche to our natioun, We have thairfor, of our awin absolute auctorite and power, Ordanit the said vyld and detestable Conspiracie to be puneisheit to the death ; to the terror of all uthiris to interprise the lyke heireftir. FOR quhilk purpois, We have maid and constitute, and be the tenor heirof Makis and Constitutis, our richt trust coung and counsallor ROBERT LORD OF ROXBURGHE, our Justice in that parte, to the effect undirwritin ; Gevand, Grantand and Committand to him, our full power and Commissioun, expres bidding and charge, to try and examine the said Mr Petir, upoun the forme, maner and circumstanceis of the said Conspiracie, and upoun the vyld Murther, quhairof he is suspectilty ; And, giff neid beis, for the better discoverie of the treuth, to put him to Tortour : As als wa, to put him to the knowlege of ane Affize for the same, and giff he cry guilty of the said Conspiracie and intendit Murther committit be him, that he caus execute him to the deid for the same ; and in special, for the foull and treterous Conspiracie foresaid : And for this effect, Justice Courtis, at quatsomevir placeis convenient, to sett, begyn, affix, have and continew ; fuitis to make to be callit ; absentis to amerciat, unlaws and escheitis of the saidis Courtis to ask, lift and raise, and for the same, giff neid beis, to poind and distrenzie ; Affisers neidfull to this effect, *respective*, under the pane of fourty pundis, to summond, warne, cheis, and cauis to be sworne ; clerkis, serjands, dempstair, and all uthir officiars of Courte neidfull to make, creat and ordane, for quhome he sal be haldin to answer ; and generallie, all and findrie uther thingis to do and use, quhilk for executioun of this our Commissioun ar requisite and necessar ; ferme and stable halding, and for to hald, all and whatsomevir thingis in our name fall be done herein. Given undir our signet, and subscrivit with our hand, AT BRECHIN, the tent day of October, and of our reign the xxxv, and yeir 1601.

(Locus figilli.)

JAMES R.

Breaking into the Lord Chancellor's House—Theft, &c.

May 7.—WILLIAME CREYCHTOUNE, sumtyme indweller in Edinburgh.

Dilatit and accusit, ffor samekill as he, accompaneit with John M^cCulloch and Robert Ahannay, laitlie, in the moneth of September lastbypast, cam to Johne Erle of Montrois chancellaris house, besyde the Abay of Halyruidhous, and thair, vnder fylence of nycht, brak the samyn, and thifteouslie stail, concelit, reffett and away-tuik furth thair of, fourtie-fyve pound pecis, ane cloik, twa dowblettis, ane bow and foure arrowis, with ane pair of filk schankis, pertening to James Grahame, sone to the Chancellor, and vther seruandis to the Chancellor : Att the leift, for airt and pairt of the steilling, conceling and away-taking thair of.

As at mair lenth is contenit in the Dittay, quhilk wes verifeit be his awin Depofitiounis and Confessionis.

VERDICT. The faid Williame wes putt to the knowlege of ane Affyfe, and thay being chofin, fworne and admittit, be the mouth of George Frenfche in Edinburgh, chancillar, ffand, pronunceit and declarit the faid Williame Creychtoun to be ffylit, culpabill and convict of the crymes foirlaidis.

SENTENCE. ffor the quhilk caus, the faid Juſtice-depute, be the mouth of Robert Galbraith, dempſtar, ordenit the faid Williame Creychtoun to be tane to ane gibbet to be affixit vpoun the Caſtel-hill of Edinburgh, and thairvpoun to be hangit quhill he be deid; and all his movabill guidis to be efcheit, &c.

[*Mr Williame Hairt and Mr Williame Boirthuik, Juſtices-deputes.*]
Treason—Purchasing, Forging, and Vending of Counterfeit and Adulterated Coin — Theft, &c.

Maij 29.—THOMAS M^cALEXANDER of Drummocheyre; James Johnestoun, ſone to Johnestoun in Kirkcaldie, ſumtyme ſeruitour to Johne Johnestoun, wryter; George Dowglas, ſumtyme in Bengoure, now in Edinburgh; Williame Maxwell, ſone to George Maxwell in Haik; Cuthbert Home, ſone to v^mq^{le} Robert Home of Reidheuch; and James Moffat, ſone to Moffet of Helbeth.

Perſewit be Mr Thomas Hammiltoun of Drumcarne, aduocat to our ſouerane lord, for his hienes intereſs, of the crymes following, that is to ſay,

DITTAY againſt M^cAlexander and Johnestoun,

FOR airt, pairt, red, counſale and conceiling of the treſſonabill Outing¹ amangis our ſouerane lordis liegis, in the Tounis of Gawyefyde, Dalſarf, Hammiltoun, Clochſtane, Air, Irvin, and vtheris pairtis, of certane fals and counterfit ten ſchilling peices, to the ſimilitude of his hienes trew coinzie; committit ane yeir ſenſyne in harveſt. *Item*, for airt, pairt, red, counſall and conceiling of the treſſonabill forging, counterfitting, caſting and prenting of xxx falſe ten ſchilling peiceis, within the citie of Glaſgw, in David Hallis bak chalmer thair; quhair thay, togidder with v^mq^{le} Marioun Hepburne and ane ſerwand woman of hirs was lugeit; off the quhilkis, thay treſſonablie outit ane to the faid David Hallis wyffe; and the faid Thomas M^cAlexander delyuerit twa of the ſaidis pieceis to the faid James Johnestoun, at the Bridgend of Glaſgw; and als delyuerit to him fyve pundis w^t2 thairof, in ane lytill 3aird at the faid Brigend, quhilk he tuk bak fra him agane. *Item*, for airt, pairt, &c. of the treſſonabill fforgeing, prenting and caſting in calmis³ of trie, fillit with calk,⁴ within the place of Tourlandis, of twa fals foure merk pecis, to the ſimilitude of his Maieſteis trew coinzie of foure merk pecis of ſilver; quhair of the faid Thomas outit ane to ane honeſt man in Air: Lyke as, the faid James, be direction of the faid Thomas, convoyit the calme out of Irving to the place of Tourlandis, quhair he and Sandie of Tourlandis was preſent at the treſſonabill fforgeing of the ſaidis pecis, quhilk wer maid of ane pew-

¹ This term correſponds with the modern law term ‘uttering;’ literally, putting out, circulating. ² Probably for ‘worth,’ although it is alſo an uſual abbreviation for ‘wecht,’ weight. ³ Moulds. ⁴ Wood bedded with chalk or plaſter.

der plait: Committit in harvift, bygane thrie 3eir. *Item*, the faid Thomas being accusitt ffor airt, pairt, &c. of the treffonabill reffaueing fra George Dowglas, callit of Bengowre, of fourtie poundis in fals fyve pound pecis, foure pound pecis, and crounis, to haif bene outit amangis our fouerane lordis liegis, as trew and guid gold; quhair of he outit twa fals crounis to Johne Johnestoun in Mayboill, and lent the rest thair of (except ane foure pound peace and twa crounis, quhilkis he referuit to him selff) to Gilbert Makalexander in Air; and delyuerit the foure pound peace to Bruce, his feruant. *Item*, the faid Thomas dilatit and accusit, ffor samekill as he, accompaneit with William Boirthuik of Johnestounburne and twa of his feruandis, betuix Martimes and 3will,¹ in the yeir of God Im. V^c. lxxxxviiij yeiris,² past owre att the Qeinis-fferrie, towardis Castell Campbell, or thairby, quhair thay brak ane hous, and thifteoullie stall, concelit, reslett and away-tuik furth thair of foure hors, and cam about be Stirling to Falkirk, quhair his naig³ tyrit: And fwa, wes airt and pairt of the thifteous fteilling of the faidis foure hors. *Item*, the faid Thomas being dilatit of airt and pairt of the thifteous fteilling, concelling, refetting and away-taking of ane naig fra ane feruand of the Erle of Cassilis, quhilk Bruce his feruand stall be his directione, and William Maxwell delyuerit the samyn to Gylbert Mcalexander.

DITTAY against George Dowglas, sumtyme in Bengoure, now in Edinburgh.

DILATIT for the treffonabill bying of fourtie peacis of fals gold, in fyve pound pecis, foure pound pecis and crounis, and the maist pairt of them wer crounis, fra vmq^{le} Dauid Johnestoune, quhilk he reffaut in the moneth of Junij, or thairby, in Kingorne, to be treffonablie outit; ffor the quhilk he payit fourtie merk in guid siluer, quhair of Johnstounburne, his pairtiner, payit tuentie merkis. Lykas, he, togidder with the faid William Boirthuik, William Maxwell, Moirle and James Hoppringill his fernandis, past, at Mydsomer was ane yeir, to ane fair in Air, for outing of the samyn, quhair he, in the faid fair, coft⁴ ane broune meir;⁵ ffor the quhilk, he treffonablie outit and payit xxiiij poundis of the faid fals gold: And als, bocht ane naig fra James Hammiltoune, feruand to the Maister of Cathcart; for the quhilk he treffonablie outit and payit xxvj or xxvij lib. of the faid fals gold; The quhilk gold the faid James Hammiltoune, being outand in Aire, for certane Lundoune wairis, the samyn wes cryit fals; the faid James immediatlie thaireftir followit the faid George, fra the burcht of Air, be the space of foure myles, rasit the countrey and owertuik him and his cumpany, and compellit him to reffaue the fals gold, and restoir the faid naig to the faid James Hammiltoune: Estir the quhilk, he, accompaneit with Thomas McAlexander apperand of Drummochryne, William Boirthuik of Johnstounburne and his feruandis, satt down be ane brae-syde, and pairtit⁶ the fals gold quhilk he left vnoutit,⁷ and delyuerit fourtie poundis worth thair of to the faid Laird of Drummochryne, in fals fyve pound pecis, foure pound pecis and crounis; and outit and delyuerit to the faid William Boirthuik, his pairtiner, tuentie poundis worth thair of; and retenit thrie crounis thair of to him selff; quhilk he thaireftir outit and delyuerit to the faid Williame Maxwell; and sua, hes committit Treasoun.

DITTAY of Williame Maxwell, sone to George Maxwell in Haik.

INDYTIT, accusit and persewit, ffor airt, pairt, red, counfall and conceilling of the pairting of the faid fals fyve pound pecis, foure pound pecis and crounis, quhilkis George Dowglas, callit of Bengoure, pairtit and delyuerit att ane brae-syde, cumand out of Air, att Mydsomer wes ane yeir, to Thomas McAlexander, apperand of Drummochryne, and Williame Boirthuik of Johnestounburne; quhair of he delyuerit fourtie poundis worth to Drummochryne, and xx lib. thair of to the faid Williame Boirthuik, quha delyuerit the samyn to the faid Williame Maxwell, quha convoyit it to Edinburgh; and att his cuming, restoirit agane to the faid Williame Boirthuik, quha thairefter outit ane of the faidis fals crounis in, and ane vther in Lauder; and thairby, the faid William Maxwell committit Treason.

¹ Yule or Christmas.

² Anno 1598.

³ Horse, nag.

⁴ Purchased, bought.

⁵ Mare.

⁶ Parted, divided.

⁷ Uncirculated.

Item, indytit ffor the treafounable reffauing fra George Dowglas of thrie fals crounis, to be outit as guid gold amangis our fouerane lordis leigis; quhair of he delyuerit ane to Jeane Reid, spous to James Lewingstoune, in wad¹ of ane faiddill, and the vther twa he delyuerit to the Guidman of Johnestounburne. *Item*, accusit, ffor samekill as he, being in cumpany with vmq^{le} Morlie, and being seruandis to Williame Borthuik of Johnestounburne, be his speciall directioun and command, past to West Lowtheane about Caldermure or thairabout, and thifteoullie stall, concelit, reffett and away-tuik furth thair of, twa meiris; quhilk he convoyit to the west end of the toune, and thairfra directit thame hame with Morlie to Johnestounburne; and cam in him selff to Edinburgh to James Lewingstounis hous thair, quhair ye mett the Guidman of Johnstounburne and tauld him how ye sped.

DITTAY against James Moffet, sone to Moffet of Helbeth.

FORSAMEKILL as he, accompaneit with Petir Daveis Johnestoun of Kirkhill, Thomas Stewart seruand to Rob of Kirkhill, Jony Lyall and Crystie Brydene seruandis to the Guidman of Cairtertoune, and James Wilfoune vnder Geordie of Kinmonth, in the moneth of I^m.V^c.lxxx yeris, cam to ane hill pertening to Mr James McMath of Dalpever, and thair thifteoullie concelit, reffett and away-tuik aff the famin, fourscor of scheip, pertening to the said Mr James; off the quhilk he gatt fourtene for his pairt.

DITTAY against Cuthbert Home, sone to vmq^{le} Robert Home of Redheuch.

FORSAMEKILL as he, accompaneit with Johne Broderstanis, younger sone to Johne Broderstane, fleschour in Tranent, and Richard Paterfoune, in the moneth of March, or thairby, I^m.V^c.lxxxviiij yeris, cam, vnder fylence and cloud of nycht, to John Creychtounis duelling-hous at Prestoun-grangemyll, and thair thifteoullie brak the said hous aboue the dur, enterit thairin, and brak vp his kist, and thifteoullie stall, concelit, reffett and away-tuik furth thair of, foure hundreth poundis worth of gold and siluer, or thairby, and maist crewallie dang the said Johne Creychtoun and his wyff, and left thame for deid: Of the quhilk soume he gatt fiftie pound for his pairt. *Item*, ffor the thifteous Refsetting of faxtene schep, or thairby, pertening to Sir Patrick Hepburne of Lufnes, knycht, and Williame Caldecleuch in Eister Gemmillscheillis, his seruand and schiphird; quhilkis scheip wes thifteoullie stollen be Mertene Hall: Committit in the moneth of Januar I^m.Vj^c. yeris. *Item*, ffor Commoun Thift, Commoun Refsett of thift, inputting and outputting of thift, fra countrey to countrey, fra land to land, bayth of auld and new.

FOR the quhilkis crymes, the saidis (persounes on pannell) wer putt to the knowledge of ane Assyise, of the persounes after specifeit; they are to say.

ASSISA.

Johne Stenhoip of Stenhopismyll,	Johne Logane of Cowstoune,	Alex ^r Horsburcht of Horkas,
Williame McClellane Tutour of W ^m Annand in Tranent,		Johne Henderfoune in Prestoune,
Bombie,	Johne Farguyfoune of the Yle,	Rob ^t Anderfoun burges of Perth,
Dauid Seytoun, elder in Tranent,	George Hereis, sumtyme of the	Williame Polwart, sumtyme of
Capitan Patrik Herring,	Kirktoune of Essie, now in	Rottinraw,
James Dalzell eldar, in the Wat-	Edinburgh,	Williame Halyburton, sumtyme
ter of Leith,	Johne Boifwall of Afflek,	of Inchkairney.

The Aduocat protestit for Wilfull Errour, in cais thay acquit.

VERDICT. Efter the accusatioun of the saidis persounes be Dittay of the saidis crymes, quhilk wer verifeit be thair awin Depositionis and Confessioun, (the Assyis) removit altogidder furth of Court to the laich Counsal-hous; quhair

¹ Pledge, security.

thay, eftir chefing the faid Johne Boifwall of Afflek Chancillar, reafonit and votit vpoun the faid Dittayis *refpective*, and ewerie point thair of, &c. ; and be the mouth of the faid Chancillar ffand, pronunceit and declarit the faid Thomas M^cAlexander and George Dowglas, James Johnftoun, Williame Maxwell, James Moffett and Cuthbert Home, to be ffylit, culpabill and convict of ewerie poynt of the Dittayis *refpective* aboue writtin, quhairof euerie ane of thame *refpective* wes accufit, and quhilk wes laid to thair charge.

DOME pronounced against the Pannels.

FOR the quhilk caus, the faid Mr Williame Haert, Justice-depute, be the mouth of Robert Galbraith dempftar, ordanit the faid *Thomas M^cAlexander*, as convict of Treafoun and thift; *James Johnftoun*, as convict of Treafoun; *George Dowglas*, as convict of Treafoun; *Williame Maxwell*, as convict of Treafoun and thift; to be tane to the Caftell-hill of Edinburgh, and thair to be wirreit at ane ftaik quhill thay be deid, and all thair landis, heretaxis, takis, ftedingis, rowmes, poffeffiounis, cornis, cattell, guidis and geir, to be fforfaltit and efcheit, and inbrocht to our fouerane lordis vfe: AND als ordanit, be the mouth of the faid dempftar, the faidis *James Moffett* and *Cuddie Home* to be tane to the faid Caftell-hill of Edinburgh, and thair to be hangit vpoun ane gibbett, quhill thay be deid; and all thair movabill guidis to be efcheit and inbrocht to our fouerane lordis vfe, as convict of the faidis crymes of Thift.

[*Mr Williame Haert, Justice-Depute.*]

Treason — Uttering base Coin, &c.

JUN. 6.—THOMAS GLASS in Fowles, and Johne Gib at the Wodheid of Condie.

THOMAS GLASS was dilatit for the treffonabill Outing of xij false fyftie-fchilling peiceis of gold, to the fimilitude of our fouerane lordis trew coinzie, amangis his hienes liegis; off the quhilkis peiceis, he reffauit foure fra vmq^{le} Walter Murray in, foure fra Johne Murray his brother, and foure fra Patrik Drummond of the Lenach. *Item*, for the treffonabill reffauing fra George Drummond, faidler in Perth, of twentie peice of false fyve-pund peiceis, hat-peiceis, and fyftie-fchilling peiceis; and for the treffonabill outing thair of amangis our fouerane lordis liegis, as trew gold; quhairof he gaif ane pairt to Robert Schedden, nolt dryuer. AND ficlyke, JOHNE GYB, for airt and pairt of the cumming in cumpany with vmq^{le} Mr Williame Balfoure, brother to the Laird of Burlie, Johne Oliphant and vmq^{le} Harie Cuke, his ferwandis, Patrik Murray of Galwallis, his ferwandis, in the moneth of Februar lafbypaft, vnder fylens and cloude of nycht, and thair thifteoullie breking vp the dur of the faid hous, entering thairin perforce, and thifteous ftealing, conceling, reffetting and away-taking furth thair of, ane purfe with foure fcoir and twelf merkis, pertening to the faid Andro; quhilk the faid Johne delyuerit to the faid Mr Williame; togethir with ane horfe and ane meir, and his haill infycht pleneiffing.

VERDICT. The Affyis, be the mouth of William Stalkar, goldsmyth in Edinburgh, Chancellour, ffand, pronunceit and declarit the saidis *Thomas Glas* to be ffylit, culpabill and convict of the crymes aboue writtin, quhairof he was accusit; and als, ffand and pronunceit the said *Johne Gib* to be ffylit, &c. of the crymes whairof he was accusit and persewit.

SENTENCE. THOMAS GLAS to be tane to the Castell-hill of Edinburgh, and thair to be wirreit at ane staik quhill he be deid, and his bodie to be brunt in asses; and all his landis, heritageis, takis, ftedingis, rowmes, possessionis, coirnis, cattell, guidis and geir to be forfalt and escheit to our fouerane lordis vse, as convict of the crymes foirsaidis: AND als decernit and ordanit the said *JOHNE GIB* to be tane to the Castell-hill of Edinburgh, and thair to be hangit quhill he be deid; and all his movabill guidis to be escheit, &c.

Horse-stealing — House-breaking — Theft.

Jun. 18.—NICOLL *alias* NIKKIE MOFFETT, at the Brigend of Cramond, and Daud Adiesoune, sone to Johne Adiesoune, in Dyfert.

NIKKIE MOFFETT was dilatit and accusit for airt and pairt of the thifteous steling of twa naigis fra James Bannatyne, tennent to the Laird of Cleghorne, twa yeir senfyne or thairbye, furth of ane burnesyde bevest¹ Calder. *Item*, for airt and pairt of the thifteous steling of ane blak naig fra Patrik Clarkfoune in Blakburne; of ane gray meir; and for commoun thift and commoun ressett of thift.—AND siclyke, DAVID ADIESOUNE being accusit for the steling furth of Margret Strathauchinis hous, in the Cannogait, of ane naipkyn, quhairin thair was xij aucht mark peiceis, ane hairt of gold, ane pair of grene filk gartonis, and ane cloik of Inglis hewit² grene claith, pertening to Daud Drummond, feruitour to Sir Johne Ramfay, committit at Martymes lastwas: *Item*, for bryking of Mark Lord Newbottill chalmer, and steling furth thairof ane veluot cloik, ane raise veluot gounne furrit, and vtheris guidis and geir: *Item*, for the thifteous steling furth of Robert Erskyne house, in the fit of the Cannogait, of certane gold, filuer, claythis, guidis and geir, with thre hundreth markis: *Item*, for commoun thift, &c.

VERDICT. The Affyis, be the mouth of Hector Daudfoune, sword-flipper in Edinburgh, Chancellor, ffound the pannels to be ffylit, &c.

SENTENCE. To be tane to ane gibbet, standand vpoune the Castell-hill of Edinburgh, and thairvpoune to be hangit quhill thay be deid; and all thair movabill guidis to be escheit, &c.

¹ To the westward of.

² Coloured.

Striking a Person, while the King was sitting in Judgement, &c.

Jun. 20.—JOHNE DUNDAS of Newlistoune.

Dilatit for contravening of the Actis of Parliament, in stryking of Mr James Hammiltoune, sone to James Hammiltoune, at the Vest-port of Lynlythqw; committit the 3d of¹

PERSEWAR, Mr Robert Lyntoune, aduocat, substitute for Mr Thomas Hammiltoune.

PRELOQUUTOURIS for the pannell, Mr Johne Scharpe, Mr Will. Oliphant, Mr Robert Leirmonth.

DITTAY against Johne Dundas of Newlistoune.

THAT quhair, be our fouerane lordis Actis of Parliament, maid in the moneth of Julij I^m.V^c.lxxxxiij yeiris, it is statute and ordanit, that quhofoewir fall stryke or hurt in ony tyme thairestir ony persoune, before his hienes Justice or his deputis sittand in judgement, or within the inner 3ett of our fouerane lordis Palice, quhair his hienes fall mak residence for the tyme, or within the outar Tolbuith of Edinburgh, the tyme that the Lordis of his hienes Sessioun (fit) for administratioun of Justice, fall incur the pane of death, and falbe accusit criminallie thairfore; as att mair lenth is contenit in the said Act of Parliament maid thairanent: AND trew it is and of veritie, that the said Johne Dundas of Newlistoune, being forgetfull of his dew obedience and reverence, quhilk he aucht to our fouerane lord and his hienes autoritie, laitlie, vpoun the ferd day of Junij instant, he being within the Tolbuith of the burcht of Edinburgh, in the bak hous thair of, quhilk is betuix the owtar Tolbuith and the inner Tolbuith, his Maiestie being for the tyme, in proper persoune, sitand in the Inner hous with the Lordis of his hienes Counfall and Sessioun for administratioun of Justice, he than enterit in conference and speiche with Mr James Hammiltoune, eldest lauchfull sone to James Hammiltoune, att the West-port of Lynlythqw; and eftir sum contentious and hett langage past betuix 3ow (them) twa, 3e (he) maist dispytefullie, butt respect or regaird of his Maiesteis personall presens in the Inner-hous and Tolbuith, or to the tyme and place, the before none, in the tyme of the sitting of the Lordis of Sessioun, invadit and persewit the said Mr James, and straik him with 3our (his) neave vpoun the face, and had nocht fail3eit to haif followit out 3our (his) persuit, with all rage and crewaltie, againis the said Mr James, war nocht 3e (he) wes stayit be ane number of our fouerane lordis guid subiectis, awaiting in the Tolbuith vpoun his hienes, or vpoun thair awin actionis for the tyme: Quhairby he, be strykeing of the said Mr James vpoun the face, quhen our fouerane lord in proper persoun wes sitand in the inner Tolbuith, and the tyme that the Lordis of Sessioun wes sitand thair for administratioun of justice, hes incurrit the pane of death; quhilk sould be execute aganis him, conforme to the said Act of Parliament, with all regour.

(The pannell) declarit, infasar as his Maiestie, as is contenit in the Dittay, wes sitand in the Tolbuith, the samin was by his knowlege;² and that vpoun the occasioun of sum contentious wordis fallin furth betuix him and Mr James Hammiltoune, quhairwith he wes movit to mak sum mynt³ for revange thair of, and thairby maid sum truble in the Myd-hous, quhairwith his Maiestie is justlie offendit; That he will cum in his Maiesteis will for ony fact or offence committit to our fouerane lord, or the Lordis of his hienes Sessioun, the tyme and place contenit in the Dittay; to be confidderit be his Maiestie, according to his hienes guid will and pleasour, and according to his accustomit clemencie, schawin to vtheris his hienes liegis for the lyke crymes of before.

¹ The fourth of June instant. See Dittay.

² Unknown to him.

³ Attempt, motion.

With the quhilkis premisses, the Justice tuik him to be auifit quhill Tyifday nixtocum, the xxij day of this instant, that he mycht knaw his Maiesteis will thairin : And ordenit the Bailleis of Edinburgh present, to tak the said Johne Dundas to waird to the Castell of Edinburgh : And siclyke, caufit Andro Home, ane of the Officeris of Court, to warne the persounes summond vpoun the said Johne Dundas Assyis, to compeir in the Tolbuith of Edinburgh to pas vpoun his Assyis, vnder the panis contenit in the Actis of Parliament.

Jul. 9.—THE following Precept ordanit to be infert in the buikis of Adiornall.

REX,

JUSTICE, Justice Clark and 3 our deutes. We greit 3ow hairtie weill : Forfamekill as Johne Dundas of Newlistoune, being indytit and accusit in ane Court of our Justiciarie, haldin within our Tolbuith of Edinburgh, pe xx day of Junij lastbypast, for pe invading and persewing of Mr James Hammiltoune, lauchfull sone to James Hammiltoune, att pe West-port of Lynlythqw ; and strykeing of him vpoun pe face, vpoun pe ferd day of pe said moneth of Junij, &c. And We having ressaute the said Johne Dundas in our will, and having weyit and confidderit the haill circumstance of pe cryme contenit in pe said Dittay, and quhatfumeuir thing wes done be the said Johne the day and place foirfaid ; the said Johne, according to our will notifeit be ws to him selff, hes payit the soun of ane thousand sewin hundreth and fiftie merkis, quhilkis wer debursit in sum of our necessar affairis ; quhair of we discharge the said Johne for ewir be pir presentis. And siclyke, according to our direction gevin to him, as ane vpir pairt of our will, hes comperit in presens of our Chancillar, President and Lordis of Sessioune, thay being convenit in full nowmer in pe said Inner counsal-hous for administratioun of justice, and thair hes fullelie satisfeit pame for ony offence done be him to pame, the saidis day and place. We Will thairfore, and be pir presentis declairis, that the said Johne Dundas salbe fred and relewit furth of pe waird, quhairin presentlie he is ; and We command 3ow to freith and releve him of pe samin : As also, we declair that the said Johne Dundas fall nocht att ony tyme heireftir be indytit, persewit or accusit for ony fact or deid committit he him the day and place foirfaid ; bot We acquyte and mak him frie pairof in all tyme cuming : And thairfore We command 3ow, that, in our Justice-Court to be hauldin in pe said Tolbuith of Edinburgh, the said nynt day of Julij instant, in presens of pe said Johne Dundas, 3e mak publicatioun of pe declaratioun of our Will, estir pe forme and tennour of pir presentis ; and that the said Johne hes obeyit and fulfillit the samin in all pointis : Kepand pir presentis for 3our Warrant. Subscryuit with our hand, att Halryuidhous, the sewint day of July, the 3eir of God, Im.Vj^e. and ane 3eiris. (Sic subscribitur) JAMES R.

MONCRIEF CANCELLARIUS. FYVIE SECRETARIUS. HOME COMPTROLLER. J. HALYRUIDHOUS.

Namesucken — Brigancy — Oppression — Horse-stealing — Foraying, &c.

Aug. 1.—THOMAS CWNINGHAME, sword-flipper, serwand to (Williame Cwninghame) the Laird of Tourlandis.

Dilatit of certane crymes of Thift, and for taking of captive and presoner Patrik Gemmill.

DITTAY against the Pannel.

THOMAS CWNINGHAME, sword-flipper, sumtyme seruitour to Williame Vaus, armorar in the Can-nogait, being enterit on pannell, dilatit and persewit : Forfamekill as he, accompaneit with Alexander

and Hew Cwninghames, breper to the Laird of Tourlandis, vmq^{le} Johne Cwninghame alias Potter, Marioune Parker, Iffobell Parker hir sifter, Williame Speir, ferwand to the said Alexander, and ane vther boy, laitlie, in the moneth of Januar lastbypast, vnder scyence and cloude of nycht, be way of Hamefuckin and Brigancie, come to Patrik Gemmill duelling-hous in Tempilhous, quhair he, his wyffe and familie was, in fober and quyet maner, takand the nychtis rest, dredand na evill or harme; and thair brak vp the dur of the said hous, enterit thairin perforce, and tuke the said Patrik and his wyffe furth of thair bedis, band his wyffe fit and hand, and kaist hir in ane mekill kift,¹ manassit² the said Patrik to delyuer to thame his filuer and gold; and becaus he refusit to do þe samyn, thay band ane tedder³ about his nek, and hang him vp vpoune ane balk,⁴ quhair he hang ane lang space, quhill⁵ the said Thomas for pitie cuttit him doune; and thairefter thay pakkit vp his haill infycht guidis and ple-neiffing in scheittis, and caufit the saidis thre wemen convoy the samyn thifteouslie vpoune thair bakis: And thaireftir tuke and apprehendit the said Patrik Gemmill captiue and presoner, and convoyit him, being ane ageit man of threscoir of yeiris, in ane grit storme, be the space xxviiij myles fra his awin hause, quhill he come to Clyddisholme, quhair he was relevit be the Bailleis of Lanerk: Vfurpand thairbye our fouerane lordis auctoritie vpoune thame; the said Patrik being his hienes frie liege; and the said Thomas was airt and pairt of the saidis crymes. ITEM, for airt and pairt of the cuming vpoune ane Sabboth day, ten oukis senfyne or thairbye, in tyme of preching, accompaneit with Williame Cwninghame of Tourlandis, Alexander Cwninghame, his brother, vmq^{le} Johne Cwninghame, the pot-ter, and vtheris ferwandis of the young Laird of Blaquhannis, and vtheris thair compliceis, to the nowmer of xiiij personis or thairbye, and rynning of ane forrow⁶ with the Laird of Cwninghames heidis tennentis, for the thifteous steling and reving fra thame of xij horse and meiris, quhilkis war fauld in the cuntrey. ITEM, for airt and pairt of the thifteous steling and away-taking of twa naigis, ane foir⁷ and ane vther broune, pertening to Thomas Bigger in Byres furth of the landis of Warreikhill, committit in Junij lastwas. ITEM, for commoune thift, commoune reffett of thift, &c.

VERDICT. The Assyis, be the mouth of Johne Farguesoun of the Yle, Chan-cellar, ffand, pronunceit and declarit the said Thomas Cwninghame to be ffyld, culpabill and convict of the haill poyntis of the Dittay aboue writtin, and crymes thairin contenit.

SENTENCE. To be tane to ane gibbet, vpoune the Castell-hill of Edinburgh, and thairvpoune to be hangit quhill he be deid; and all his movabill guidis to be escheit, &c.

Striking Ministers — Obstructing the Designing of Manse and Glebe.

Aug. 18.—SIR DAVID WOD of Craig, knyght.

Dilatit, accusit and persewit of the crymes following.

PERSEWAR, Mr Thomas Hammiltoune, aduocat to our fouerane lord.

PRELOQUUTOURIS for the pannell, Mr Johne Scharpe, Mr Lowrence M^cGill, Mr Robert Cokburne.

DITTAY against the Pannell.

FORSAMEKILL, as it is expresse statute and ordenit be Act of Parliament, maid in our fouerane lordis Parliament, hauldin and begun att Edinburgh, the xxix day of Julij, the yeir of God I^m.V^c. lxxxvij yeiris, that quhatsumewir persoun or persounes invadit ony Minister, or puttis ony violent

¹ Chest.

² Menaced, bullied.

³ 'Tether,' halter or rope.

⁴ Beam.

⁵ Until.

⁶ Foray,

or predatory incursion.

⁷ Sorrel.

Fr. saure, Ital. sauritto, a dark reddish colour.

handis in him, for feiking of thair lewingis,¹ or sic vther cauffis or quarrellis specifeit in the said Act, falbe pwneift thairfore with all regoure, and incur the pane of tinfall of thair movabill guidis for the said invasioun and violence allanerlie, albeit na Slauchter nor mutilatioun follow thairvpoun; the half of the said movabill guidis to be applyit to our fouerane lordis vse, and the vther halff to the pairtie offendit, but² preiudice of the heichar pwneifchment, gif ony gritar cryme concur with the violence and invasioun foirfaid; and to be callit criminallie thairfore, before our fouerane lordis Justice or his deputtis, att particuler dyettis: As the said Act att mair lenth beris. And trew it is, that Sir David Wod of Craig, knyght, accompaneit with vtheris his complices, with convocation of our fouerane lordis liegis, to the number of tuelf persounis or thairbye, all bodin in feir of weir with swordis, gantilletis and vtheris wappinnis, *inuafue*, incontrair the tennour of the Actis of Parliament, laitlie, vpoun the xxvj day of March lastbypast, cam to the Kirk of Fordoun, and to the landis occupyit be lyand besyde the said Kirk, and within the Sheref dome of Kincardin, quhair Mr Adam Walker, Minister att Fordoun wes, accompaneit with sum of the Presbiterie of the Mernis, according to the ordinance of the Act of Parliament, and the directioun of the said Presbiterie, cum to haif designit³ ane Manse to Patrik Bonkle, principall Minister att Fordoune, and to his successeuris; dredand na ewill, harme, iniurie or persuit of ony persoun, bot to haif lewit vnder Godis peax and our fouerane lordis; and thair, fyrst boifit,⁴ manassit and threatint the saidis Ministeris, and speciallie the said Mr Adam Walker, for thair bodelie harmes; and thairefter, sett vpoun the said Mr Adam Walker, and invadit and strak him with the gaird of his sword vpoun the heid, putt violent handis in him, and with his sword, behind his bak, strak att him, and dang him to the eird;⁵ and with thair drawin swordis hurt and woundit him in baith his handis, to the effusioun of his blude in grit quantitie; and thairby, for the quarrell of the designation of ane gleib⁶ and manse, quhilk is ane pairt, at the leift, fould be ane pairt, of the said Mr Adamis lewing, he beand ane of the Ministeris of Fordoune, and helper to the said Patrik Bonkill to the cuir⁷ thairof, thay haif put violent handis in the said Maister Adam, invadit, straik, dang and bled him with the gairds of thair swordis, and with drawin swordis, in maner foirfaid; and he wes airt and pairt thairof: Quhairby he hes incurrit the payne of tinfall of all his movabill guidis; the ane half thairof to be applyit to our fouerane lordis vse, and the vther halff thairof to be applyit to the vse of the said Mr Adam Walker, as partie offendit.

The pannell takis instrumentis of his entrie, and protestis for releve of his cautioner fummond for his entrie; and that thair is na partie persewar bot my Lord Aduocat; and that na persoune assistis him in this persuit; and that the lettres ar rasit at his lordschipis instance allanerlie.⁸

The Aduocat passis fra all vther persounes, nor⁹ the Laird of Craig; and passis fra that pairt of the fummondis, ordaning ony vther persounes guidis to be escheit, *pro loco et tempore*.

The Judge declaris, that na pairt of the pane contenit in the Act of Parliament fall fall to the pairtie,¹⁰ bot only to the Kingis pairt, conforme to the Act of Parliament.

¹ Livings, stipend. ² Without. ³ To designate or appoint a place for the Minister's manse, or dwelling-house, &c. ⁴ Intimidated, brow-beat. ⁵ Struck him to the ground.
⁶ The glebe (*gleba*) is a piece of arable and pasture ground, uniformly allotted to the Parochial Clergy of Scotland, and usually adjoining the manse. ⁷ Viz. the cure of souls. ⁸ At the instance of the public prosecutor alone; not at the instance of the private party, with the Lord Advocate's concurrence. ⁹ Excepting, but, other than. ¹⁰ Viz. that the private party injured shall have no share of any penalties which might be awarded; but that the whole should fall to the Crown, as sole prosecutor.

It is alledgeit be Sir Daud Wod, that this mater aucht nocht to be putt to ane Affyis, except it wer verifeit, be writt, that Mr Adam Walker is the Minister of the Kirk of Fordoun, and that he had commiffioun to mak designation of the gleib and manse that day. Anfueris the Aduocat, that the alledgeance aucht to be repellit, in respect of the Act of Parliament and of the fummondis; and thay thingis are *meri facti*, and only pertinent to the Affyse.

Forder, it is allegeit be the said Sir Daud and his preloquutouris, that the lettres ar alluterlie¹ irrelevant, takand thair ground and fundament vpoun thais wordis of the Actis of Parliament, ‘anent the invasioun and putting of violent handis in ane Minister, vpoune quarrell, for feiking of his lewing;’ and that particuler cause is only proponit in this lybell; and it is subfunit, that diuerse of the Ministeris of the Mernis, and speciallie the said Mr Adam Walker, wes boistit and manaffit² the day lybellit, quhilk alledgeit boisting and manaffing is na relevant cause to induce the penaltie lybellit. Forder, that pairt is generall, nocht condiscendand vpoun the names of the vther Ministeris. *Item*, thair is ane manifest irrelevancie in ane vther pairt of the saidis lettres and subfumptioun thairof, berand, that the gleib alledgeit designit wes ane pairt of the said Mr Adam Walkeris lewing, att the leift fould be ane pairt thairof, becaus he is alledgeit to be successeur to Patrik Bonkill, quha be the letteris thame selffis is grantit to be the Minister of Fordoune: As also, it is grantit that the said pretendit designation wes maid be the said Patrik, and fwa is grantit to be alluterlie the said Patrikis lewing: And the Act of Parliament vnderstand in that pairt, to be, of the lewing of the persounes that ar offendit, and nocht of the lewingis he hopis for to be successeur; quhilk is *de futuro contingenti*; for he may be depriuit, or deceise, before the deceise of Patrik Bonkill.

The Aduocat repeatit the fummondis and Act of Parliament, for ane anfuer.

The Judge, in respect that this fummondis is only execute aganis the Lairdis selff, quhairby he is accusit vpoun his awin deid done be him to Mr Adam Walker, alledgeit Minister att the Kirk of Fordoune, and craving designation of the gleib and manse, as the said fummondis beris, to Patrik Bonkill, principall Minister thairatt; and that his coadiutour wes strikin and invadit for that cause, sustenis the fummondis.

Quhairvpoun Mr Thomas Hammiltoun askit instrumentis.

ASSISA.

Williame Raitt of Halgrene,
Robert Arbuthnet, feare of
that Ilk,
Johne Allerdies of that Ilk,
Patrik Falconer of Kilhill,
Johne Irving in Quhyterigis,

Daud Rait feare of Halgrene,
Daud Arbuthnet of Fyndowrie,
Alexander Sybbald (Sibbett) in
Watterstoune,
Robert Strathauchin in Munbodo,
Andro Gray of Kinggornie,

Robert Rait in Sillieflat,
Robert Arbuthnet in Barkhill,
Williame Sybbald (Sibbett) in
Carnetoune,
Archebald Irving in Reidmyre,
James Tullo in Allertoune.

¹ Altogether, entirely.

² Intimidated and menaced or threatened.

The Aduocat protestis for Wilfull Errour, in caise thay Acquyte; becaus the Laird of Craig hes confest the deid, and maid his repentance thairfore.

VERDICT. The Affyis, be the mouth of Robert Arbuthnet, fear of that Ilk, Chancillar, for the maist pairt, ffand, pronunceit and declarit the said Sir David Wod to be Acquyte, cleane, innocent and clangeit of the haill crymes aboue writtin, quhairof he wes accusit and perfewit: Quhairvpoune the said Sir David Wod askit actis and instrumentis; and protestit for his Testimoniall.

Sir Johnne Wifchart of Pittarro, knycht, Johnne W. his sone and air, Robert Falconer of Balandro, Johnne Allardes, fear of that Ilk, Johnne Ramsay, eldar of Balmaine, Alexander Lyndesay of Brodland and Patrik Craig in Kinneth, and ilk ane of thame, wes vnlawit in the pane of ane hundreth merkis, for nocht comperand on the said Affyis.

Murder.

Nov. 13.—WILLIAME NUKILSOUNE (NICOLSOUNE) in Dirltoun.

Dilatit, accusit and perfewit,

FORSAMEKILL as he, and Adame Nicolfoune, his sone, with thair complices, being bodin in feir of weir, with swordis, forkis, quhingear and vtheris wappynnis, *invasiue*, laitlie, vpoune the xiiij day of September lastbypast, haifing confaut ane deidlie hatrent and malice aganis vmq^{le} Williame Jakfoune in the Cannogait, for taking of ane schaeff of peis off thair land, fett vpoune him, vnder scylenge and cloude of nycht, besyde the Place of Dirltoun, quhair he was in sober and quyet maner for the tyme, doand his lefull effairis and buffines, dredand na evill, harme, iniurie or persuit of ony personis, bot to haif leuit vnder Godis peax and our souerane lordis; and first straik him with ane fork in at the leask;¹ and thairefter, strake him with quhingearis aboue the left palp,² and throw the bodie; and thairefter, bure him to the said Williamis duelling-houfe in Dirltoun, and caufit dicht³ the blude fra his woundis, and syne tuke him furth of the said houfe, and careit him to the Place of Dirltoun, and kaift him behind the 3et thairof, to the effect that the said crewall Murthour fuld nocht haif cum to lycht: And swa, maist crewallie and vnmercifullie slew and mordreift him; and he was art and pairt thairof.

VERDICT. The Affise, viz. ‘George Dewar seruitour to the Lady Gowrie, George Bettie, cuke and brewster to her in Dirltoun,’⁴ &c., be the mouth of Hew Baillie in North-Beruik, chancelar, ffand the pannell to be Innocent and Acquit of art and pairt of the Slauchter of the said Williame Jakfoune, &c.

Murder of the Warden of the West Marches.

Nov. 14.—THOMAS ARMSTRANG, sone to Ringanis Thom. (In the Dittay he is styled ‘sone to Sandeis Ringane.’⁵)

Dilatit, accusit and perfewit be Archbald Carmichell of Edrom, brother to vmq^{le} Sir Johne Carmichell of that Ilk, knycht, Warden of the West Marcheis of Scotland, for the tyme, of the cryme following: that is to say,

¹ The groin or flank, sometimes spelt *leask* or *lish*. ² Breast. ³ Wipe off. ⁴ The rest of no note. ⁵ This last seems his proper designation, as the Dittay mentions ‘the said Ringane (Ninian) his fader.’ The loose mode of designating persons, in the rank of life of the pannell, which was prevalent in the Borders at this period, is apt to lead modern readers into confusion as to identity of persons.

FORSAMEKILL as he, accompaneit with the said Ringane his fader, Lancie, Hew, Archie and Watt Armstrangis his brether, Sym of the Syde, Lancie of the Syde, Rob Sandie, Rob Scott, Thome Tailzeour, Williame Forrester, Williame Grahame of the Braid of the Grange of Medop, and divers vtheris his complices, to the number of xx, commoun thewis and traittouris, all bodin in feir of weir,¹ with jakis, steilbonettis, lances, hagbuttis; haifing, be the instigatioun of vtheris quhais names he knew, consultit, dewyfit and interpryfit the crewall, treffonabill and schamefull Slauchter of vmq^{le} SIR JOHNE CARMICHELL of that Ilk, than Warden of the West Marcheis, vpoun ane Soneday, in the moneth of Junij, the yeir of God I^m.Vj^c. yeiris, att ane meitting at the fute-ball,² quhair diuers borderaris and freindis wes conuenit to that effect: Quhilk purpois being plattit and sett down³ be him and thame, and being fuirly aduertesit that the said vmq^{le} Sir Johne was to keip Court⁴ at Lochmaben, vpone the morne thairefter, being Monunday and the . . . day of the said moneth of Junij, the yeir of God foirsaid; ffor executioun of the quhilk treffonabill and vngodlie fact, thay mett altogidder, att thair tryfing place⁵ of the Blerieheid, quhair thay lay att waitt for the said vmq^{le} Sir Johne Carmichellis passing by; and as he wes in sobir and quyet maner passand by to the said Court, dredand na ewill, harme, iniurie or persuit of ony persounes, bot to haif lewit vnder Godis peax and our fouerane lordis, he being his Maiesteis Wardene for the tyme, thay altogidder sett vpoune him at the Rae-knowis, schott thair hagbuttis att him, and thairwith maist schamefullie, crewallie (and) treffonablie schot the said vmq^{le} Sir Johne Carmichell throw the body, and flew and mordreift him thair; vpoun sett purpois, provisioun and foirthocht felony.

VERDICT. The Assyis, be the mouth of George Ferrie, portioner of Restalrig, Chancillar, ffand, pronunceit and declarit the said Thom Armstrang to be culpabill and convict of airt and pairt of the treffonabill and crewall Slauchter and Murthour foirsaid.

SENTENCE. For the quhilk caus, the said Justice-depute, be the mouth of Robert Galbraith, dempstar, Decernit and Ordanit the said Thom Armstrang to be tane to the mercat croce of Edinburgh, and thair his rycht hand to be flrickin fra his arme; and thaireftir to be hangit vpoune ane gibbett, quhill he be deid;⁶ and thaireftir, to be tane to the Gallows on the Burrowmure, and thair his body to be hangit vp in irne cheinis;⁷ and all his movabill guidis to be escheit, to our fouerane lordis vse.

¹ Arrayed or furnished in warlike manner.

² At this period, especially on the Borders, it was by no means uncommon to have such meetings for playing at foot-ball, archery, &c.—and these games were often taken advantage of, for the perpetration of deeds of violence; at least, they were frequently terminated by bloodshed and violence, through the feuds of neighbouring clans or districts.

³ Plotted and arranged.

⁴ A Warden's Court, for punishment of excesses committed on the Borders, &c.

⁵ Appointed place of meeting.

⁶ Robert Birrel thus notices this event.

⁷ The 11 of July (1600), the Laird of Carmichael buriet; quha wes flaine be the Armstrangis and Carliles, he doing and executing his office of Wardenrie, upone the 16 of Junij befoir. He thus notices the execution of Armstrang and *the Peck*, whose trial immediately follows. 'The 14 of November, Thomas Armstrong and Adam Steill, *alias* callit *the Peckit*, wer baith hangit at the croffe. This Thomas had his hand strak aff with ane stroke, befor he wes hangit, becaus he wes at the slaughter of James Carmichael. This *Pecket* wes ane of the maist notabill thieffes that evir raid.'

⁷ This is the earliest notice in this Record of a Criminal being hung in chains which the Editor has yet met with, and was evidently, in this instance, suggested by the atrocity of the crime, and the dignity of the person so basely murdered. The deficiency of facts, in the earlier Volumes, may account for this circumstance; as the particulars were then seldom recorded.

Horse, Cattle, and Sheep-stealing — Slaughter, &c.Nov. 14.—ADIE SCOTT, callit *the Peck*.

Being enterit on pannell and accusit,

FOR the thifteous steilling, conceilling and away-taking of certane oxin, furth of the Drochellis, pertening to the Erll of Mortoune and his tennentis. ITEM, for airt and pairt of the thifteous steilling of certane scheip furth of ane rowme besyde Lammingtonne. ITEM, for airt and pairt of the thifteous steilling (and) conceling of fourfcoir heid of nolt, furth of the landis of the Cairne, pertening to certane Lowthian men, quhilk wes in gerfing¹ on the famin landis. AND for airt and pairt of the slauchter of vmq^{le} Hary Rannald, feruitour to Sir James Sandielandis of Slewmanne-mure, and vmq^{le} Andro Smyth in Auchnowlis-hill, committit in the moneth of August, I^m.Vj^c. yeiris. ITEM, for airt and pairt of the thifteous steilling of foure hors furth of Corfwodburne, pertening to Sir James Sandielandis of Slewmanne-mure. ITEM, for airt and part of the thifteous steilling of xvj oxin furth of Lestoun-scheillis, pertening to Alexander Dowglas. ITEM, for airt and pairt of the thifteous stelling of certane guidis fra the Guid-wyff of Garvell-fute. ITEM, for airt and pairt of the thifteous steilling of certane guidis furth of Ingerstoun-burne, pertening to Rychard Hodge thair. ITEM, for airt and pairt of the thifteous steilling of certane claith furth of Caringtoun-mylne. ITEM, for the cuming to Johne Ker Minister of Lynis hous, breking thairof, taking of him selff presoner, and steilling of his infycht and pleneiffing furth thairof. ITEM, for airt and pairt of the thifteous steilling of twa naigis furth of Hairburneheid, pertening to Adame Johnestoun thair. ITEM, for airt and pairt of the thifteous steilling of threttie gers oxin² furth of Corfwodburne, pertening to certane Lowthean men. ITEM, for the steilling of certane oxin, pertening to Adamfoun in Lestounscheillis. ITEM, for the setting upoune vmq^{le} Rodger Schaw in Craiganbae, George Schaw thair, Quintene McMillane in Craigneill, Downie McMillane thair, Sandie McMillane thair, Johne Chalmeris in Clatteran-schawis, Johne McMillan in Dasselloch, George McMillan his brother, George McMillan in Craiginbae, Andro McMillan in Powfschaskene, James Reid in Stroneschaskene and Williame Gordoune in Knokschene, att the Sandiehillis; quhair he and his complices flew the said vmq^{le} Rodger Schaw in Craigbae, and thifteouslie stall xxij naigis fra thame. ITEM, for airt and pairt of the thifteous steilling of nyntene nolt furth of the byre of Nether Quhitlaw, pertening to Thomas Ker of Caveris; committit at Martimes 1600 yeiris. ITEM, for Commoun Thift and Commoun Reflett of Thift, inputting and outputting of thift.

VERDICT. The Affise³ ffand, pronunceit and declarit the said Adie Scott to be ffylit, culpabill and convict of the haill cryme of Thift and slauchteris aboue writtin, laid to his charge.

SENTENCE. The Justice Ordanit him to be tane to ane Gibbett att the mercat croce of Edinburgh, and thairvpoun to be hangit quhill he be deid; and all his movabill guidis to be escheit, &c.

Uttering Adulterated Money, &c. — Treason.

Nov. 27.—GEORGE DRUMMOND, burges of Perth.

Dilatit and accusit of,

THE Tressonabill outing⁴ of fals and adulterat money, sic as Hatt-pecis,⁵ cronnes, foure pound pecis,¹ Grazing.² Oxen sent from the Lothians to pasture or graze.³ The same as in

preceding Trial.

⁴ Uttering, issuing.⁵ An early coin of James VI. in which the head

is surmounted with a hat, in place of the crown or laurel.

and foure merk pecis, amangis our fouerane lordis liegis, as trew money and coinzie, att the ffairis of Perth, Striuling, and in vther mercattis in the North pairtis; quhilk fals coinzie he bocht fra Hanis Johneftoune, Fleming, Charles Hereis, Fleming, and Arthour Smyth, a fmyth duelland befye Banff, and wes coinzeit be thame in Banff, Elgyn, Abirdene and Lenocho, fyve or fax yeiris fyne.

VERDICT. The Affyis, be the mouth of Petir Spens, dagmaker in the Canogait, chancellor, ffand, pronunceit and declarit the said George Drummond to be culpabill, ffylit and convict of the cryme of Treasoune aboue written.

SENTENCE. To be tane to the Castell(hill) of Edinburgh, and thair to be wirreit att ane ftaik quhill he wes deid, and his bodie to be brent in affis; and all his landis, heretageis, guidis and geir to be forfaitit, efcheit and inbrocht to our fouerane lordis vfe, as convict of the saidis crymis.

[*Mr William Hairt, Justice-Depute.*]

ASSESSORS, Lords Halyruidhous, Dunkeld and Fentonbarnes.

Treason—Keeping the House of Cunninghamehead against the King's Commissioners — Slaughter.

Dec. 15.—WILLIAME CUNNINGHAME of Tourlandis.

Dilatit, accusit and perfewit be Mr Thomas Hammiltone of Drumcarne, aduocat to our fouerane Lord, of the crymis following, contenit in Dittay produceit be the said Aduocat.

DITTAY against the Pannel.

WILLIAME CUNNINGHAME of Tourlandis, ye ar indytit and accusit, fforfamekill as Alexander Cwninghame, your brother, and certane his complices, hyrit and conduceit suddartis,¹ haifing, in the moneth of March the yeir of God Im.Vj^e. yeiris, tane the Hous of Cwninghameheid, and being chargeit be vertew of our fouerane lordis lettres to haif randerit the famin within², vnder the payne of Treffoune; Neuirtheles, it is of veritie, that ye, within fourtie aucht houris efter the taking of the said place, and eftir the charge gewin for randerit thair of vnder the pane of Treffoun, convoyit youre selff and enterit within the said place and hous of Cwninghameheid, and treffonablie affistit the said Alexander Cwninghame, your brother, in keping of the said hous aganis the Lairdis of Duntraith and Vrchill, his Maiesteis Commissioneris, quha wer affageing the said place, and that be the space of xxiiij dayes eftir your entrie within the famin; during the quhilk tyme, ye and your compliceis treffonablie fshot out of the said place diuers hagbutis att the saidis Commissioneris and thair affist-eris; committand thairby oppin and manifest Treasoune, and incurrand the tinfall of lyffe, landis and guidis; quhilkis aucht and fould be execute aganis yow, with all regour. To the takin³ that ye ar gyltie of the said cryme, ye haif confest the famin, be youre Deposition. ITEM, ye ar indytit and accusit, fforfamekill as ye, accompaneit with Alexander Cwninghame, your brother, and vtheris your compliceis, being bodin in feir of weir, with fecreitis, steilbonnettis, dagis and pistolettis, prohibite to be borne, worne, vfit or fshot with, be our fouerane lordis Actis of Parliament, laitlie, in the moneth of September, or thairby, the yeir of God Im.V^e.lxxxxvj yeiris, haifing confaut ane deidlie feid, rancour and malice aganis vmq^{le} James Stewinfoune in the Myltoune of Robertoune, come to the Landis of the Myltoune of Robertoune, quhair the said vmq^{le} James wes in sobir and quyet maner, doand his lefull effairis and buffines, dredand na ewill, harme, iniurie or perfuit of ony perfounes, bot to haif

¹ Waged, or stipendiary soldiers.

² Left blank.

³ In proof, token, or testimony.

lewit vnder Godis peax and our fouerane lordis; and thair, with your wappinnis foirfaidis, maist schamefullie, crewallie and vnmercifullie flew the said vmq^{le} James; and ye was airt and pairt of the said crewall Slauchter; committit vpoun fett purpois and provisioune, and foirthocht felony. To the taikin that ye ar airt and pairt of the said Slauchter of the said vmq^{le} James Stewinsoune, ye wes, vpoun the xxij day of Januar I^m.V^c.lxxxxvij yeiris, denunceit rebell and putt to the horne, for nocht comperand befor the Justice or his deputis, in the tolbuith of Edinburgh, the xxiiij day of November, the yeir of God foirfaid, to haif vnderlyne the law for airt and pairt of the Slauchter foirfaid; att the quhilk horne ye haif remainit continewallie senfyne, and as yit remanis: as the Letteris of Hoirning, producit heirwith, beris.

PERSEWAR, Mr Thomas Hammiltoune of Drumcarne, Aduocat to our fouerane lord.

PRELOQUUTOURIS for the pannell.

Mr Williame Oliphant,

Mr Johne Ruffell,

The Laird of Reidhall,

Mr Alexander King,

The Laird of Glengarnok,

The Laird of Capringtoun.

The Preloquutouris producit ane Warrant of the Lordis,¹ commanding thame to compeir in Defence of the Laird of Tourlandis, now enterit on pannell; quhilk Warrant is subscryuit be the Chancellor, *in præsentia Dominorum*.—The pannell takis instrumentis, that the Justice declaris that *Sir Johne Cokburne of Ormiston*, Justice clark, fall nocht be judge nor Assessor, nor yit Justice clark in this mater.² Alledgeis, that *Sir George Home*, thesaurer, can nocht be Assessor, because he may win and tyne in the cause, in caise of convictione. The Aduocat anfueris, that the alledgeance aucht to be repellit, in respect he is nocht partie. The said Sir George Home declarit he wold nocht voit in that mater.—The Aduocat takis instrumentis of the admitting of my Loirdis of Halyruidhous, Dumkerd³ and Fentounbarnes to be Assessouris in this cause.

The pannell alledgeis, that he fould be cited vpoun fourtie dayes wairning, for the alledgeit Treasoune of keping of the hous. The Aduocat anfueris, that it hes bene the inviolabill practik, quhen ony is tane⁴ for Treasoune, to putt him to ane Assyis for the said cryme of Treasoune, but⁵ citatioun.

The Justice repellis the alledgeance maid be the pannell.

It is alledgeit that the Dittay is nocht relevant, in respect of the generalitie thair of, nocht condiscendand att quhais instance the charge wes gevin to rander the place, quhom to, or *ex qua causa*. The Aduocat alledgeis that it aucht to be repellit, in respect of the Dittay.⁶ Forder, the Dittay is nawyis relevant, becaus I wes nocht chargeit, nor na intimation wes maid to me of the charge,

¹ This form was usual, especially in cases of Treason, in order to screen Counsel from the consequences of defending one who must be inferred to have been most obnoxious to the King. A Supplication was, in the first instance, presented to the Lords of Council and Session, by the pannel, praying them to name 'prolocutors' for the defence, and suggesting various names. The prayer was generally granted, as a matter of course.

² 'Declinator' of the Judge was competent, on the ground of relationship, or that he had a pecuniary or other interest in the case, &c.

³ Bishop of Dunkeld?

⁴ Taken or apprehended and put in ward.

⁵ Without.

⁶ It will be noticed, in the course of this Collection, that this loose and unjust mode of answering a special objection was usually sustained by the Court, seemingly on the ground, that such must of necessity be held to be *inferred*, from the general scope of the Indictment. Much of the apparent obscurity in such matters, however, may arise, from the brief manner in which these circumstances are recorded in the Books of Adjournal.

nor na qualificatioun of the Dittay of my knowledge. The Aduocat anfueris, it aucht to be repellit, in respect of the Dittay.

The Justice ffindis the Dittay relevant, and referues the hail defenssis proponit aganis the verificatioune of the Dittay to the Assyis; ffindis the proces for the slauchter.

The Aduocat passis fra the taking away of the horse, *pro loco et tempore*.

ASSISA.

Nicoll Carnecroce of Calfhill,	Capitan Patrik Herring,	Thomas Alexander, portionar of
James Weitchie of North Syntoune,	Archebald Layng, merchand thair,	Drummeldrie,
Robert Hepburne of Markill,	Johne Fairlie, merchand thair,	Williame Dowglas of Erlismylne,
Johne Baillie of S ^t Johnes Kirk,	James Johnestoune, merchand	Johne Dunbar of Moynes,
Edward Edzer, merchand burges	burghes thair,	Thomas Hay of Scrogis,
of Edinburghe,	Robert Home of the Heuch,	Andro Logane of Grantoune.

Quhilkis persounes being chofin, sworne and admittit, eftir the accusatioun of the said Williame Cwninghame of Tourlandis, of the crymes contenit in the Dittay foirsaid; ffor Verificatioune of the fyrst poynt thair of, the said Mr Thomas Hammiltoun, aduocat, produceit the said Williame Cwninghames Depositounis and Confessiounis; quhairof the tennour followis.

DEPOSITION and CONFESSION of the Pannel.

AT ED^R, the xij day of December, 1601 3eiris. In presens of Johne Erll of Montrois, chancillar, S^r George Home of Spott thesaurar, Mr Thomas Hammiltoun of Drumcarne Aduocat, Sir Johne Cokburne of Ormiston Justice Clark, and Mr Williame Haert of Lewielandis Justice-depute, WILLIAME CWNINGHAME OF TOURLANDIS, being sworne, and being demandit, anent pe last taking of pe Place of Cwninghameheid and keping of pe famin, anfueris, that the hous wes fyrst tane be his broper Alexander, vpoun quhais aduerteisment, vnderstanding that thair wes sum variance betuix him and the sudartis within the place, the deponer cam to pe place, and enterit pairin, and remanit within pe famin be pe space of twentie or xxiiij dayes; be pe quhilk space he wes besaiget be pe Lairdis of Duntraith and Vrchill, haifing the Kingis Commissioun; during pe quhilk tyme thair wes schuting out of pe hous and schuting in: Declaris, that his broper Alexander had nocht enterit in pe place of Cwninghameheid fourtie aucht houris, before the deponer cam to him; and the taking of pe place wes about March, 1600 3eiris: Denyis that he wes chargeit or putt to pe horne, for nocht randerin of pe Place of Cwninghameheid; bot his broper wes chargeit, vnder pe payne of Treasoun, befoir pe deponar enterit in pe hous, and gatt knowlege pairof quhen he enterit.

And als the Aduocat produceit the Extract of the Lettres, vnder the signe and subscription of Mr Robert Young, for chargeing of the Toune of Glasgw to assist the Kingis Commissioner, for Asslageing of the said hous, and to head fourtie haggbutteris thairto, in respect of the Commissioun and Lettres of Treasoun, direct and execute aganis the Laird of Tourlandis and his complices; quhilk wes disobeyit. Quhilk Extract of the Letteris, is of the dait, at Halyruidhous, the fewint day of March, 1600 yeiris.

And for verification of the last poynt of the Dittay, concerning the Slauchter of the said vmq^{le} James Stewinfoune, the Aduocat produceit Extract of the

Letteris of Hoirning, vnder the subfcriptioun of Mr Johne Skene, clark of Regifter, quhairby the faid Williame Cwninghame of Tourlandis wes putt to the Horne.

VERDICT. Eftir productione quhairof, and diuers alledgances maid aganis the famin, and anfueris maid thairto be our fouerane lordis Aduocat, the haill perfounis of Affife pafte altogidder out of Court to the Counfal-hous; quhair, eftir chefing of the faid Nicoll Carncorfe of Calfhill chancellor, &c., they ffand, pronunceit and declarit the faid Williame Cwninghame of Tourlandis to be Cleane, innocent and acquit of airt and pairt of the Slauchter of the faid vmq^{le} James Stewinfoune, committit in the moneth of March, in the yeir of God J^m.V^c.lxxxxvj yeiris, as the Dittay beris: AND als, ffand, &c. the faid Williame to be ffylit, culpabill and convict of the affifting of Alexander Cwninghame his brother and his complices, in the keping of the Place of Cwninghameheid aganis the Lairdis of Duntraith and Vrchill, his Maieftis Commiffioneris; the faid Alexander being chargeit, vnder the payne of Treaſoune, to haif randerit the famin, conforme to his Depofitiounes, fufcryuit with his hand.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair hisheid to be ftrikin fra his body:¹ And als his lands, heretageis, takis, ftedingis, rowmes, poſſeffiounes, coirnes, cattell, guidis and geir to be ffoirfaltit, efcheit and inbrocht to our fouerane lordis vſe, as convict of the faid cryme.

Adultery.

Dec. 16.—DAUID GRAY, fyſchemonger in Edinburgh.

Dilatit for the cryme of Adulterie, committit with Elfpeth Hiſlope, indueller in Edinburgh, and Margaret Gourlay, wedow in Edinburgh.

The faid Dauid confeſſis that he had ado with baith Elfpeth Hiſlope and Margaret Gourlay, as the Dittay beiris; bot knawis nocht quhither the bairnis be his or nocht. For the quhilk he askis Godis mercie, and cummis in the Kingis will.

VERDICT. The Affyis, for the maiſt pairt, ffylis Dauid Gray of the cryme foreſaid.

Dec. 26.—SENTENCE. The Juſtice, be the mouth of Robert Galbraith, dempſtar, Ordenit the faid Dauid Gray to be baneift the burcht of Ed^r, and during all the dayes of his lyff; and nocht to return thairin, without his Maieftis licence, vnder the payne of deid: And als, Decernit and Ordanit the faid Dauid to pay to the Baillie of the Quarter of Ed^r quhair he duellis, the ſoume of fourtie poundis money, to be applyit to the vſe (of) the Kirk: And to paſs in waird in the Tolbuith of Ed^r, thair to remane quhill the famin be payit.

¹ ' The 16 of December, Cuninghame of Tourlands beheidit at the croſſe, for Treaſoune. —*Birrel's Diary*, p. 55.

[*Mr Williame Hairt, Justice-Depute.*]

ASSESSOURIS. My Lord Chancillar, The Bifchop of Dunkeld,
The Lord of Halyruidhous, The Comptrollar, My Lord Collectour.

Slaughter — Wearing and Shooting Dags and Pistolets, &c.

Dec. 18.—THOMAS TRUMBILL apperand of Mynto ; Daud Daudfone of Kames ; George, Raff, James and Williame Daudfoune, his fones ; Jaquie Laidlaw of Rafflat ; Hector Trumbill of the Firth ; James Trumbill, callit *baneist James* ; Mark Trumbill in Bewlie ; Andro Trumbill, his brother ; Walter Trumbill, callit *Sir Davidis Wattie*.

Accusit and perfewit be Mr Thomas Hammiltoune of Drumcarne, aduocat to our fouerane lord, for his hienes interes, being affisted be Mr James Ker, brother to vmq^{le} Thomas Ker of Craling, of the crymes following.

DITTAY against the Pannels.

FORSAMEKILL as it is statute and ordenit be diuers of our fouerane lordis Actis of Parliament, that na maner of perfoun or perfoues, of quhatfumewir estait, degrie or conditioun thay be of, fall schuit, weir or beir culveringis, dagis or pistolettis vpoun thair bodeis, or in thair cumpaneis, in ony pairt of this realme, ather to burcht or land, vnder the payne of cutting aff of the rycht hand, and confiscatioun of all thair guidis movabill, being convict be ane condigne Affyis thairof : Neuertheles, it is of veritie, that the saidis perfounis, accompaneit with diueris vtheris thair compliceis, with convocatioun of our fouerane lordis liegis, to the number of xxx perfounes or thairby, all bodin in feir of weir, with jakis, steilbonettis, hagbuttis, daggis, pistolettis, lances and vtheris wappinnis invasiue, of thair causing, command, assistance and ratyhabitoune, the saidis dagis and pistolettis being expresse forbidden, vpoun the fourtene day of September lastbypast, being the mercat and ffair day of the burcht of Jedburghe, cam to the said burcht in ane professit hostilitie, nochtwithstanding publick Proclamatioun maid in our fouerane lordis name, and in name of Sir Andro Ker of Pharnyherst knyght, Proveft of the said burcht of Jedburghe, and of the bailleis thairof, that nane shuld repair to the said ffair or mercat bot in fobir and quyett maner, keping oure fouerane lordis and the said Proveft and bailleis peax : And yit, in manifest contempt of the said Sir Andro Ker, thay haifing confaut ane deidlie feid aganis him and vmq^{le} Thomas Ker his brother, and haifing of lang tyme before invadit and perfewit Thomas Ker of Caveris, thair freind and kynnisman, for his slauchter and hurt, and woundit him in diuers pairtis of his body, to the grit effusioun of his blude, nawyis repenting thame of thair former wickit deidis and wrangis, bot continewing thairin, thay addrest thame felffis before his ludgeing in the burcht of Jedburghe, foiranent the mercat croce thairof, he being within the famin in fobir and quyet maner for the tyme, with his (wife ?) and famelie : and thair, in publick mercat tyme of day, eftir diuers bragis, insolent behavioure and manaffingis vfit be thame foiranent the said Proveft ludgeing, in contempt of him and his seruandis, feiking the occasioun of ane new quarrell, without ony offence, harme or iniurie done to thame, nocht only thay wure vpoun thair bodeis and in thair cumpaneis pistolettis and gunnis, bot als schot the famin att the said Sir Andro, his seruandis, and diuers honest inhabitantis of the said burcht, of sett purpois, provisioun, auld feid and foirthocht felony ; bot specially, schot the said vmq^{le} Thomas Ker and vmq^{le} George Glaidner, domestik seruand to the said Sir Andro : And swa, thay maist crewallie and vnmercifullie slew the said vmq^{le} Thomas Ker and vmq^{le} George Glaidner with thair wappinnis foirfaidis : And thay and ilk ane of thame ar airt and pairt thairof ; and consequentlie, thay and ilkane of thame ar nocht only giltie of the saidis slauchteris, bot lykewyis of schuiting and

weiring of the faidis dagis and pistolettis, in maner foirfaid; with convocatioun of our sowerane lordis leigis: And in respect thair of, thay and ilkane of thame aucht and sould be pwneift in thair persounes and guidis, according to the lawis of this realme, in example of vtheris.

PERSEWAR, Mr Thomas Hammiltoun of Drumcarne, aduocat to our sowerane lord; Mr James Ker, brother to (the said v^mq^{le} Thomas and to) the said Sir Andro Ker of Phairnyherst.

PRELOQUUTOIRIS for the pannell, Mr Johne Scharp, Mr Williame Oliphant, Mr Johne Daling, The Scheref of Roxburcht, The Guidman of Buchtryg, The Guidman of Hwtounhall, The Laird of Mynto 3ounger.¹

Williame Erll of Angus comperit and defyrit Jaquie Laidla, duelland in Ancrum, quhilk is ane pairt of the Regalitie of Jedburghe-Forrest, to be Replegeit to his Regalitie. The Justice findis him to be replegeit.

The pannell defyris that thir materis may be continewit quhill Tyifday,² and that it may cum *in pari passu* with the vther caus;³ becaus letteris being rafit be thame ofbefore, before my lord Justice and his deputis, againis the Laird of Phairniherst and his complices, to ane day of lang tyme bypast, before ony Lettres wer rafit be the partie aganis thame, it pleasit his Maiestie to command to defert that dyett: And summondis being rafit now be my lord Aduocat aganis bayth the parteis to this day, for deidis alledgeit committit be thame aganis vtheris⁴ vpoun ane day, viz. the xiiij of September last; it hes pleasit my lord Justice, with auise of the Nobill men, counsalouris and affeßouris, to continew the persuit of thais parties nixtocum the xxij day of this instant; off all reasoun, this persuit aganis thame aucht to be continewit to the famin day; and tryell tane of the factis committit be ather of the parteis aganis vtheris, *pari passu*, and be ane Inqueist, but ony diuision of the cauffis.⁵

THE JUSTICE, nochtwithstanding of the defyre, Ordanis proces.

The Aduocat declaris he will infist aganis all the personis enterit vpoun pannell: And passis fra thir wordis in the lybel, 'be way of Hamesucken.'

THE JUGE Ordanis the Aduocat to condiscend, in speciall, vpone the tyme of the hurting of the Gudman of Kaveris.

The Aduocat condiscendis and declaris the hurt done to the Gudman of Kaveris, wes committit be the haill persones persewit, awcht yeris fyne, or thairby, lastbypast.

The pannell takis instrumentis of the Interloquutour and the Aduocattis speciall condiscending vpone the tyme foirfaid of the hurting of the Gudman of Kaveris.—My lord Aduocat declaris he infistis aganis the pannell for the crymes of Slauchteris libellit, vpoune foirthocht felony; and for the bering and wering

¹ His name is only inserted at the second *diet*, after the case was continued to the Air of Roxburghe.

² Tuesday.

³ A counter pursuit against Sir Andro Ker of Phairnyherst, and others, which was delayed till Dec. 23, (q. v.)

⁴ Against each other.

⁵ Without any separation of these two cases.

of pistolettis; with convocatione, and being airt and pairt thair of.—The pannell allegit that the lybell, in that pairt anent the Convocatione, is na wyfe relevant, quhairvpon the persones vpon pannell or ony of thame may be put to the knowlege of ane Inqueist; vnder protestatioun, that thai one na wyfe grant the samyn to be of veritye; becaus the personis of the pannell, samony of thaim as convenit in Jedburgh, the tyme libellit, convenit at the command and directione of the Sheref of Roxburgh, quha of befor, with concurse of the Laird of Phairnyhirst, than Proveft of the burgh of Jedburgh, had tane assurance betuix vmq^{le} Thomas Ker and vmq^{le} Robert Trumbill of Bewly and vtheris thair freindis; to the effect, that the Sheref mycht haif convoyit thame furth of the said burgh, but ony truibill, at the Burne-wynd-Port, quhairin thai enterit, vpon conditione accordit vpon betuix the Sheref and the Proveft: Lyke as, the Sheref, according to the said conditione, convoyit thame furth of the said Poirt, in quyet maner, but offence of ony man; in respect quhair of, thair repa- ring to the said Sheref can nocht be comptit ony Convocatione, quhairvpon ony cryme may be inferrit; alwyse this allegiance is proponit for the haill pannell, vnder protestatioun forsaid, that thai grant na Convocatione.

My Lord Aduocat askis instrumentis vpon the declaratioun forsaid, and that it is proponit for the haill pannell.

THE JUSTICE fyndis the lybell relevant, notwithstanding the allegiance; and Repellis the same *loco quo*; and Referris the cognitioun thair of to the know- ledge of the Assyse.

Quhairvpoun the pannell askit instrumentis.—The pannell denyes ony bering or wering of hagbuttis or pistolettis the tyme libellit; and takis instrumentis that it is affermit in the libell, *disertis verbis*, that thai wer schot to the deid with hagbuttis and pistolettis.—My lord Aduocat askis instrumentis, that it is affermit in the lybell, that thai wer schot and flane with hagbuttis, pistolettis, ‘and vtheris wappynis.’

It is allegit be the pannell, that my lord Aduocat can never be hard to allege that thai wer flane with ‘vtheris wappynis;’ in respect of the exprefs affirmatioun in the lybell, that thai wer schott with hagbuttis and pistolettis.—My Lord Aduocat passis fra thai wordis in the lybell, ‘to be deid.’

The pannell defyrit tyme to avyse with the lybell, in respect of the passing fra the wordis forsaid be the Aduocat.

THE JUSTICE ordanis proces.

The procuratouris allegis for the pairt of the haill pannell, vnder protestatioun that he on na wyfe grantis the lybell, nor na cryme thairin contenit, nor na pairt thair of to be of veritie; that the pannell aucht not to be put to the knowlege of ane Assyse, becaus vmq^{le} Thomas Ker and George Gladner, his fervand, wer

ordourly enterit our fouerane lordis rebellis, the tyme of the allegit Slauchter; and proponis this allegiance vnder protestatioun forsaide. And for verificatioun of the said allegiance, producit the extract of the Hoirning; be the quhilk lettres thai wer denunceit to the horne, for the Slauchter of vmq^{le} Henrie Olypher.

My Lord Aduocat allegis the saidis personis wer lawfully relaxit fra the Horning producit, befor the cryme libellit; and thairfore the forsaide allegiance aucht to be repellit; and producit the said Relaxatioun; and askit instrumentis of the productione of the Horning, and allegis the famin to be null, in respect of the executione not contening ony copy of the saidis lettres to haif bene gevin to the said Thomas Ker and George Glaidner, or affixt vpon thair dwelling place. To the quhilk it is anfuerit be the pannel, that the said Horning is lawchfull, being for ane criminal caus, to witt, for Slauchter, quhilk merittis na favour; be the quhilk letteris thre personis being only summond to vnderly the law, Thomas Ker and George Glaidner ar bayth personally apprehendit,¹ and the personis lykwyse lauchfully summond at the market croce, and ane copy affixt; and the letteris beris expresly, that the messinger 'deliuerit to the said Thomas ane,' quhilk of all necessity man be supponit and prefwmit to be 'ane copy,' being deliuerit be the officer, quha had na vther erand with the said Thomas, bot to charge him and deliuer him ane copy: And be the subiect of the letteris, can be referrit to na thing bot to ane copy; and the omiffioun of that word in the extract of the Horning furth of the Register can nocht preiuge the partie.—Anfuerit my Lord Aduocat, that the Horningis, being of thair awin natour odious, and nevir vfit to ressave ony favorabill interpretatione in jugement, this Horning being vfit to stay the tryell of the parties vpon pannell, for the crwell Slauchteris and vtheris crymes libellit, the Horning wanting ane necessar solempnity requisit be the Act of Parliament, is manefeist null, and sa can not stay proces.

THE JUGE Repellis the allegiance proponit aganis the nullity of the Horning. Quhairvpon the pannell askit instrumentis.

My lord Aduocat anfueris, the saidis personis wer lawchfully relaxit fra the said Horning befor the crymes committit be the pannell and producit the said Relaxatioun. The pannell yit, as ofbefoir, desyres continuatione quhill Tyf-day, or to the morne, that thai may, in the mene tyme, aduyse with the Relaxatioun producit. My lord Aduocat craves proces, and diffasentis fra all continuatione.

THE JUSTICE ordanis forder proces.

¹ A technical phrase, employed when the officer 'serves' or 'executes,' as it is termed, the Letters or writ upon the party against whom directed, by delivering a copy to him personally.

It is allegit yit be the pannell, that in respect the maist pairt of thame hes bene detenit in waird this lang tyme bigane, swa that thai culd not provyde thame selffis for defence, and this Relaxatioune is bot laitly produceit, and laitly writtin as apperis, delay awcht to be grantit presently, in respect of the tyme of the nycht.—It is anfuerit be my lord Aduocat, fik ane allegiance blekkit¹ never this buk ofbefore.—It is allegit, vnder protestatioune forsaide, that thir persones vpone pannel awcht not to be put to the knowlege of ane Inqueist, for the allegit Slauchter of the said vmq^{le} Thomas Ker, becaus, the tyme of the committing of the Slauchter, he wes enterit our fouerane lordis rebell and put to the horne, and herewith produceit the said Horning, vfit at the instance of James Maistertoune, for nonpayment sevin scoir ten li. (L.150) mony, and xl li. for expenffis.—It is allegit be the pannell, that the Relaxatioune producit for the first Horning, vfit aganis Thomas Ker and George Glaidner, is null, becaus it is expresly providit be Act of Parliament, that all registrationis salbe in the Sheref Court bukis of the schyre quhair the pairtyes wer denuncit, or quhair thai dwell. This Relaxatioune is nether affermit to be regiftrat in the Sheref bukes nor be the Sheref clerk, nather declarand befoir quhame it is regiftrate, nor be quhame, nor befoir quhame it wes produceit.—The Aduocat anfuerit, the allegiance aucht to be repellit, in respect of the Relaxatioune produceit, quhilk is minut,² produceit and regiftrate in the Sheref bukes of Roxburgh, and subscryvit be the ordiner clerk thairof.—It is allegit be the Aduocat, that the Horning produceit, at the instance of James Maistertoune, aganis the said Thomas Ker (is null?) becaus it is nocht lauchfully regiftrate, within xv dayes efter the denunciatioune, conforme to the Act of Parliament, nor yit subscryuit be the Sheref clerk.—It is forder allegit be the pannell, for the fortificatioune of the allegiance proponit for the nullaty of the said Relaxatioune produceit, that it is null; for this caus, becaus it is not regiftrate nor affermit to be regiftrate be ony Sheref clark; and insafer as it apperis to be subscryvit be ane callit Dowglas, thair wes never ane of that name Sheref clerk of Roxburgh, except ane Mr George Dowglas, quha deceiffit twa yeir before the said Relaxatioune; and he never affermes him selff to be clerk to the Sheref of Roxburgh. My lord Aduocat anfueris, as ofbefoir, the Relaxatioune is sufficient notwithstanding the allegiance, and declaris that this Relaxatioune was regiftrat be Mark Dowglas, Sheref Clerk of Roxburgh, quha wes reput theref clerk, and vfit the office by registratioune of Horningis and Relaxatiounis, and geving furth of extractis thairof.—Vpone the quhilk declaratioune the pannell askis instrumentis; and forder allegis, that Mark Dowglas wes never theref clerk, nor affermes him to be theref clerk, bot be the contraire, be deceis of Mr George Dowglas, Sheref clerk, Robert Trumbill wes lawfullie providit to

¹ Never blackened, defiled, disgraced.

² Minuted, noted in the 'Minute book.'

the said office, quha vfit and exerceit the said office of clerkship, dyueris yeris after the deceis of the said Mr George Dowglas.

The pannell declairis thai haif na mair to say, nor will say na mair, befoir this mater be put to the knowlege of ane Assyse.

THE Juges continewis the said mater quhill the morne.

Dec. 19.—THE Aduocat allegis, that he will infist only aganis HECTOR TRUMBILL of the Firth, JAMES TRUMBILL, MARK TRUMBILL and ANDRO TRUMBILL.

It is alledgeit for the rest of the pannell, that my lord Aduocat can nocht pafs fra thame, in respect of the stait of the proces, quhairin the pannell comperit and proponit findrie defenffis, quhairvpone Interloquutouris ar gewin, with auise of the Assessouris: and eftir the proponing of the alledgances and anfueris maid thairto, and Interloquutour gewin be my lord Justice; partie being willing to abyde tryell of Justice, my lord Justice may nocht pafs fra persuit in thair preiudice.

THE JUSTICE findis, that my lord Aduocat may pafs fra thame.

The pannell allegis the Relaxatioune produceit, makis no mentioun that it wes registrate in the Sheref bukis of the sherefdom of Roxburgh; in respect quhairof, na respect aucht to be had to my lord Aduocatis allegeance made thairanent.

THE JUGE, *ex officio*, desyrit the ayth of James Dowglas of Kaveris, Shereff of Roxburgh, being present, giff he knawis that Mark Dowglas wes Sheref clerk of the said sherefdom, and wes in vse to keip Courtis, and register and extract Horningis; quha being sworne, declaris, he knew not the said Mark to be Sheref clerk, be his knowlege; and that he wes never reffavit nor admittit be him to the said Office of clerkship. Quhairvpone the pannell askit instrumentis.

My lord Aduocatt askis instrumentis that my lord Justice declaris he will heir the partyes be word, (and) he will gif his Interloquutour thairvpone.—It is anfuerit be the pannell, that the allegeance proponit be my lord Aduocat aganis the validity of the extract of the Horning producit, subscryvit be my Lord Clerk of Register, awcht to be repellit, in respect of the extract, quhilk is ane Extract furth of the Register of the Horningis of the Sherefdom of Roxburgh, and as the originall buk of the Register makis na mentioun of the clerk, fwa the extract furth of the Register can mak na mentioun, becaus the Extract respectis the Register, and the Register of every sherefdom awcht not to mak mentioun of the clerk, of the productione of ilk feuerall horning; becaus it being the Register of the Sherefdom, is merkit be the clerk, quhilk is sufficient for the haill horningis thairin contenit: And my lord of Register makis na mentioun of the Sheref clerkis in the Extract of ony Horningis gevin furth be him; and

gif this Extract falbe fund null, for the argument foirfaid, the haill Extractis fubfcriuit be my Lord of Register, and the haill declaratiounis gevin be the Lordis of Seffione thairvpone, will be fund null: And it is not proper for my Lord Justice to fynd all the faidis Extractis null, for the quhilk thair is ane fufficient Warrant be Actis of Parliament, gevand my Lord Register power to extract all Horningis furth of the Registeris, and that they fall mak als grate fayth as the principall; and gif fik ane Relaxatioune had bene, as is now produceit, thefe wald haif bene also in the Register of that yeir.

THE JUGE ffyndis the Extract of the Horning produceit, vnder my Lord of Registeris fubfcriptioun, to be fufficient. Quhairvpone the pannell askit instruments.

It is forder allegeit be the pannell, that this Extract of the Relaxatioune produceit, is nocht contenit in the Register of the Sherefdom forfaid, nor is nocht contenit in the Register thair of that yeir, quhilkis ar extant in my Lord of Registeris handis.

THE JUSTICE Repellis the alledgance maid aganis the Relaxatioune, and fuffenis the faid Relaxatioune produceit.

Quhairvpone my Lord Aduocat askit instrumentis.

THE JUSTICE declaris he and the Affefforis will heir bayth the faidis parteyis, be word; and gif thair allegeanceis be worthy writting, he will heir thaim to writt; vthirwyfe nocht.

Quhairvpone my lord Aduocat askit instrumentis.

ASSISA.

Adame Quhytefurd of Myltounne,	Gilbert Pennycuik of that Ilk,	George Heiflop, armurare, burges
Neill Montgomerie of Langfchaw,	Petir Collace, indueller in the	of Edinburgh,
Matho Fynlafoune of Killeithe,	heid of the Cannogait,	George Waldye, fkyner, burges
William Weir of Auchterfardell,	Andro Naiper, burges of Edr,	thair,
Robert Cairncorfe, burges of Edr,	Andro Scott, chirurgian,	Johne Dowglas, burges thair,
James Hoppringill of Quhyte-	James Stalker, indueller in the	Williame Fyddes, baxter, burges
bank,	heid of the Cannogait,	thair.

The quhilk day, James Ker, brother to the Laird of Phairnyhirft, being perfonally prefent in jugement, fwoir the Dittay to be trew, in prefens of the Affyfe; quhairvpone my lord Aduocat askit instrumentis.

To the taikin¹ that this deid being done vpone the Ruid day,² the ffair day of Jedburgh, be thir perfonis vpone pannell, thai wer takin ryd hand³ be the Proueft of Jedburgh; and at his Maieftis command brocht to the tolbuith of Edinburgh, and hes bene kept captives thairin continually fenfyne.—The pannell takis instrumentis, that thair is na verificatioune vfit nor produceit, for verifeing

¹ In proof or evidence.
fact, 'with the bludie hand.'

² Holy Rood, or Holy Cross day, Sept. 14.

³ Red-hand, in the

of the Dittay, bot the aith of Mr James Ker, informer. The pannell produceit ane Testimoniall, subscryuit be the Sheref, togidder with ane new Declaratioun of the maner and trewth of the Slauchteris of vmq^{le} Thomas Ker and George Glaidner; quhilk thay desyrit to be insert in proces.—The Aduocat protestis, that the informatioun of partie sould nocht be reffaut, nor the Testimoniall of the Shereff sould be reffaut.—It is agreit vpoune, that George Gybsoune and William Mayne sould be reffaut witness.

The Aduocat protestis, in respect that George Glaidner is flayne with ane hagbut or pistolet, quhilk is na wappin of defence, bot vnlauchful wappin, in caise the Affyis Clange, for Wilfull errorr. And the Pannel protestis for Wilfull errorr, in case thay Convict thame, albeit he wes flane with ane hagbut or pistolet, seing thay were nocht the slayaris of him, nor had na hagbut nor pistolet; bot thair wes that he gaue away with the faidis crymis.—And the Aduocat alledgis that the pannell are airt and pairt of the faidis crymis.

THE JUSTICE findis that the Testimoniall sould nocht be reffaut.

SPECIAL VERDICT of the *Affyse*.

Quhilkis perfonis of Affyis being sworne, &c. thay removit altogidder furth of the Court to the Laich-Counsal-hous, quhair, eftir chefing of the said Neill Montgomery of Langschaw chancillar of the said Affyis, and after examinatioun of George Gibsoun and William Mayne, burgesis of Edinburgh, quha wer reffaut as witnessis, with consent of our fouerane lordis Aduocat and of the perfonis on pannell; and eftir lang reasoning and voting vpoun the poyntis of the Dittay foirsaid, being throwchlie auisit thairwith, thay reenterit agane in Court, in presens of my lord Justice; Quhair thay, be the mouth of the said Chancillar, fand, pronunceit and declarit Hector Trumbill of the Firth, James Trumbill, callit '*baneist James*,' Mark Trumbill and Andro Trumbill, brether to vmq^{le} Robert Trumbill of Bewlie, to be ffylit, culpabill and convict of airt and pairt of the slauchteris of the faidis vmq^{le} Thomas Ker, brother to Sir Andro Ker of Pharneybirst, and of vmq^{le} George Glaidner his seruand, committit vpoun the xiiij day of September lastwas, in the Burne-wynd of Jedburghe: And als, be the mouth of the said Chancillar, fand, pronunceit and declarit the faidis perfonis to be Acquit of Convocatioun of our fouerane lordis liegis, and of bering, weiring and schuting of pistolettis and hagbuttis, and of foirthocht felony, and of all the rest of the lybell.

The Justice thaireftir continewis all pronunceing of Dome, till he get his Maiesteis mynd thairanent; and committit the perfonis convict to waird within the tolbuith of Edinburgh.

On Dec. 26, the following is inserted in the Record.

DOME *ffor Andro Trumbill, brother to the Guidman of Bewlie.*

Dec. 26.—THE JUSTICE, be the mouth of Robert Galbraith, dempstar of Court, decernit and ordanit the said *Andro Trumbill* to be tane to the mercat-croce of Edinburgh, and thair his heid to be strikin fra his body; and all his movabill guidis to be escheit and inbrocht to our fouerane lordis vse, as convict of the faidis crymes. Quhilk wes pronunceit for dome.

**Shooting with Hagbutts, &c.—Slaughter—Demembration—
Convocation of the Lieges, &c.**

Dec. 23.—SIR ANDRO KER of Pharnyherst, James Ker of Lyntellie, Williame Ker, his sone; Michaell Ker in Oxnem, (stewart to the Laird of Pharnyherst,) David Anislie, younger in Falaw, Johne Anislie, his brother, Lancelot Anislie in Oxnem, Adame Anislie, his sone, Thomas Robsoun, callit *Prettie-fit*; Matho Robsoun in Burnefit, Thomas Gay in Tounheid, John Gay thair, Williame Rutherford, callit *Gray Will*, burges of Jedburghe; Johne Rutherford, his sone; James Hislop in Eschiefteill, Mr James Ker, brother to the Laird of Phairnyhirst; Williame Robsoun in Burnewynde, Thomas Ker, brother to *George the Browster*.

Dilatit for contravening of the Actis of Parliament, in beiring, weiring and schuting with hagbuttis and pistolettis: And als, for airt and pairt of the slauchteris of vmq^{le} Robert Trumbill of Bewlie, and vmq^{le} Johne Middilmest, brother to Williame Middilmest of Lillie-chapell: And for airt and pairt of the schuting of James Dowglas, apperand of Todhoill, with twa bullettis in the wambe, hurting and wounding of him thairwith: And als, for hurting and wounding of James Dowglas in Cruik, in the neife, and demembering of him of ane pairt thair of: And for demembring of Henrie Davidfoun, sone to David Davidfoun of the Kamis, of his rycht hand: And for demembring of Mark Trumbill, brother to the said vmq^{le} Robert Trumbill of Bewlie, of the thowme of his left hand: And for demembring of Andro Trumbill, his brother, of the lytill fingar of his left hand; and for hurting and wounding of Williame Trumbill in Tounheid, in the wambe, be the schot of ane pistolet with twa bullettis; committit the xiiij day of September lastbypast: With convocatione of our souerane lordis leigis; vpoun sett purpois, provisioun, auld feid and foirthocht felonye.

PERSEWARIS, Mr Thomas Hammiltoun, aduocat, Nicolas Trumbill, the relict of vmq^{le} Robert of Bewlie, Thomas Trumbill, apperand of Mynto.

PRELOQUUTOURIS for the pannell, Mr Johne Ruffell, Mr Thomas Craig, Mr Johne Leirmonth.

Comperit Williame Erll of Angus, lord of the Regalitie of Jedburghe-fforrest, and desyrit the persones following, duelland within the boundis of the said Regalitie, to be replegit to the privilege thair of; to witt, Sir Andro Ker, &c.; and produceit his Infeftment of the Regalitie, contenand expres privilege of Regalitie, and desyrit the said personis to be repledgeit.

The Aduocat allegis, that the said Laird of Pharnyherst, and remanent personis, can nocht be replegit; becaus the seasing prewis nocht Pharnyherst to be in Jedburghe-fforrest, or within the regalitie thair of; and except he preve itt,

they can nocht be hard to replege. The Lord Angus anfueris, that Pharnyherft and landis thair of ar pairt and pertinent of the lordſchip of Jedburghe-fforrefst, haldin of my Lord Angus.—The Aduocat takis instrumentis, that Thomas Trumbill, apperand of Mynto, declaris, as he is informit, that the Place of Pharnyherft is nocht within the boundis of the Regalitie: And als, the Aduocat allegis, that my Lord of Angus can nocht be hard to preve, be witneſes, the Place of Pharnyherft to be pairt and pertinent of Jedburghe-fforrefst.

THE JUSTICE findis that it may be verifeit be writt, that the Place of Pharnyherft is pairt and pertinent of Jedburghe-fforrefst.

Thairefter, it wes fund be Interloquoutour that it may be verifeit be witneſſis, that the Place of Pharnyherft lyes within the boundis of the ſaid Regalitie.

The Lairdis of Aytoun, Broxſmyth, Traquair, being produceit as witneſis to preve as above; and the Aduocat anfuerand, that they wer kyn and freindis to the Laird of Pharnyherft, the Juſtice fand that they could nocht be reſſauit for the reſpect foirſaid.

The Laird of Drummalzeare wes ſworne, that he cam nocht heir to defend the Laird of Phairnyherft, and wes produceit as witneſs to preve Pharnyherft to be within the Regalitie; and being ſworne, deponis that he knawis the Place of Pharnyherft to be within the Regalitie of Jedburghe-fforrefst.

Gylbert Pennycuik of that Ilk, being ſworne, previs na thing.

James Anislie, being ſworne and produceit, the Aduocat allegis that James Anislie could nocht be reſſauit, becaus he is of the name of Anislie, of the quhilk name diuers wes att the Slauchter aboue writtin; and ſwa the perſewaris, declarand that they bure feid aganis all the name of Anislie, the ſaid James could nocht be reſſauit: And the Juſtice referrand the mater to the declaratioun of the ſaid James, quha wes ſworne, and declarit he bure feid att na man, reſſauit the ſaid James witneſs, nochtwithſtanding that the informeris alledgeit feid: Deponit, that he knew Phairnyherft to ly within the boundis of the Regalitie.

Allegis the Aduocat, that the Laird of Pharnyherft can nocht be repledgeit, becaus he being Proveſt of the Kingis frie burcht of Jedburghe, and accuſit of ane capitall cryme committit within the ſamin, he can nawyis be repledgeit to ony Regalitie, in reſpect of the qualitie of the place and perſoun; nather can his hienes Aduocat be drawin to inſiſt in ſic ane perſuit before ony inferiour Judge, bot aucht only perſew him before his hienes Juſtice Generall.—It is anfuerit for my Lord of Angus, proponer of the exceptioun of Replegiatioun, that albeit the Laird of Phairnyherft acceptit vpoun him to be Proveſt of Jedburghe, that can nocht preiudge my Lord of Angus of his privilege of Regalitie within the haill boundis of the lordſchip of Jedburghe-fforrefst; nather yit preiudge the Laird of Pharnyherft of ony benefite compitent to him, in reſpect of

his duelling-place : And albeit ane capitall cryme be committit within the Regalitie, ather within burcht or land, that can nocht preiudge the lord of the Regalitie of his priviledge, quha is Judge compitent to all and quhatfumeuer perfounes duelland within the boundis of his Regalitie, quhairwir the cryme be committit ; And forder, the Laird of Pharnyherst is nocht perfewit as Proveft, vpoun the discharge of his office, or for ony failzie¹ committit be him, in vjing or exerceing thairof, bot as ane privat man, for the crymis contenit in the Dittay : And albeit my lord Aduocat is nocht obleift to compeir befor ony vther Inferiour Judge, that is na caus to preiuge the lord of the Regalitie of his privilege, feing the parteis offendit may perfew, and any lord Aduocat may perfew be his substitute ; and gif that argument fould be respectit, the haill heretable Regaliteis fould be vnprofitabill, and na replegiatioun fal be admittit in favouris of the lordis of the Regalitie and thair bailleis : And forder, his Maieftis Aduocat is ordinarlie partie in all criminall perfuitis.

The Laird of Pharnyherst, being inquyrit, gif he wald adhere to my lord of Angus' defyre and alledgeance, he anfuerit, that he wald gif his procuratouris leif to anfuer for him : And Mr Johne Ruffell, as procuratour for the Laird of Pharnyherst, declarit he wald keip fyence, quhill² the discuffing of my Lord Angus' alledgeance ; quhairvpoun he askit instrumentis.

DENUNCIATION against William Ker, &c. for the above crimes.

THE quhilk day, Sir Andro Ker of Phairnyhirst knight, oftymes callit as cawtioner and fouertie for WILLIAME KER, brother to Robert Ker of Ancrum, George Moscrope, burges of Jedburghe, David Moscrope his brother, thair, George Ker in Oxnem, Johne Ker in Redden, Andro Ker thair, Charles Robsfoune in Wallis, George Pyle in Mylneheuche, David Pyle his brother, and Symmie Hall in Haviesyde, to haif enterit and presentit thame befor our fouerane lordis Justice or his deputis, the faidis day and place, in the hour of caufe, to haif underlyne the law for the above crymes ; lawfull tyme of day biddin, and nocht enterand the personis abouewrittin, as he that become cawtioune for thair entrie, as faid is : Thairfoir the Justice decernit and ordanit the faid Andro Ker, as cawtioner foirfaid, to be vnlawit and amerciat for thair nocht entrie, in the panis contenit in the Actis of Parliament, vid. for nocht entrie of the faid Williame Ker, in the pane of twa hundreth markis, and for nocht entrie of the remanent ix personis, for ilk ane of thame in the pane of ane hundreth markis : And als Adjudgeit the faidis Williame, &c. to be denunceit our fouerane lordis rebellis, and put to his hienes horne ; and all thair movabill guidis to be escheit and inbrocht to his Maieftis vse, as fugitiues fra his hienes lawis for the faidis crymes.

PERSEWARIS.

Margaret Trumbill, freind³ to John Middilmest,
Mark Trumbill, brother to Bewlie.⁴

PRELOQUUTOURIS for the pannell.

The Erll of Crawford, My Lord Vchiltrie,
My Lord Newbottill, The Lard of Lytildene.

Dec. 24.—My Lord of Angus declaris, that he infistis only to haif James Ker of Lintellie and Williame Ker, his sone, replegeit ; but vnder protestatioune

¹ Failure, malversation.
was discussed.

² Until Lord Angus's allegation of being lord of this Regality, &c.
³ Relative, blood relation.

⁴ These 'persewaris' and also the 'preloquutouris' here noted, are inserted in the Record, in addition to those formerly entered.

that he passis nocht fra the priviledge of his Regalitie, nochtwithstanding that he requyres not the land of Pharnyherst replegeit.

THE JUSTICE Admittis the replegiatioun to my Lord of Angus, for replegiatioun of James Ker of Lintellie and Williame Ker, his sone: And my Lord of Angus appointis the thryd day of the nixt Justice-air of the Regalitie of Jedburghe-fforest, or soner, vpoun fyftene dayis warning, for administratioun of Justice; and ffind Ker (of Caveris) cautioner for administratioun of Justice; and James Commendater of Melroise¹ become fouertie for thair entrie; and the Guidman of Lintellie obleist him to releve my Lord of Melroise.

The Laird of Pharnyherst takis instrumentis that Mark Trumbill of Bewlie infistis in persuit of his lyffe.—The Laird of Mynto refusis to persew; quhairvpoun the Laird of Pharnyherst askit instrumentis.—The Laird of Pharnyherst askit instrumentis, that Mark Trumbill infistis in persuit of his lyffe.—The pannell, except the Laird of Pharnyherst, askit instrumentis that Mark Trumbill wold nocht infist aganis thame.

The pannell askit instrumentis that thay offerit thame selffis to ane Tryell, and to abyde ane Assyse.—The said Mark Trumbill lykwayis declaris, that he will nocht persew the Laird of Pharnyherst, att this tyme, in respect he can nocht gett ane Assyis to him.—The Laird of Pharnyherst askit instrumentis of the declaratioun of Mark Trumbill; and speciallie, in that poynt, that he being inquyrit, gif he had just caus to infist aganis the Laird of Pharnyherst? Declarit, that in respect his lyffe wes saifit be him, and in his handis, he wald nocht persew: And nochtwithstanding of the said declaratioun, to testifie his obedience to his Maiesteis Justice, and that he cravis na subterfuge, in respect of his innocencie, and that he did na thing bot as ane publict Magistrate, thairfore he willinglie offeris him selff presentlie to ane Tryell: And becaus this persuit is only movitt att my lord Aduocatis instance, he cravis his lordschapis declaratioun.

The Aduocat desyrit this mater to be continewit quhill Setterday; becaus that he had informatioun of his Maiestie to infist in persuit; and vpoun informatioun of partie, quha hes past fra the persuit.

SIR ANDRO KER of Phairnyherst, and Sir Johne Ker of Hirfell, as cawtioneris for Mr James Ker, Michael Ker, Thomas Ker, brother to George the browster, and James Hillop, to haif enterit thame, &c. were amerciat in the panis following, viz. for nocht entrie of Mr James 200 markis, and for ilk ane of the rest 100 markis: And these parties were ordered to be denounced rebels, &c.

Dec. 26.—Continued to Justice-air of 'Roxburghe, tertio Itineris, vel super premonitione xv dierum, plegiis, Patricio Home de Aytoune, D. And. Ker de Phairnyherst et D. Joanne Ker de Hirfell.'

¹ Afterwards named 'Johne,' in the Record.

Slaughter in Single Combat, in France.

Jan. 13.—CAPITAN JOHNE RIG, Archeour of the Gaird of France.

Dilatit for the Slauchter of vmq^{le} Mr Thomas Strathauchin, alias Meirnis.

Comperit Mr George Strathauchin, alias Meirnis, and produceit our fouerane lordis lettres, deulie execute and indorfat, purchest be him selff aganis Capitan Williame (Johne) Rig; and defyrit proces.

Comperit Mr Thomas Hope *excusatorio nomine* for Capitan Johne Rig, and produceit ane Warrant subscryuit be the Kingis Maiestie, ordaning the dyet aganis the said Capitane Johne to be desert; of the quhilk Precept, the tennour followis.

REX,

JUSTICE, Justice Clark and 3our deputtis, We greitt 3ow weill. Forfamekill as Capitan Johne Rig and vmq^{le} Mr Thomas Strathauchin, Archeouris of pe Gaird of France, and fwa being ferwandis to our darrest broder Henrie King of France, the said Mr Thomas Strathauchin appeillit to the said Capitan Johne Rig to pe Singolar Combat; in pe quhilk Combat the said vmq^{le} Mr Thomas was hurt and woundit, and be evill handling and cure of cherurgeanis, deceiffit: Quhilk Combat, and all that followit pairvpoune hes bene tryit be our said darrest broder Henry King of France and his Jugeis, as Jugeis compitent to pe said Tryell, the said vmq^{le} Mr Thomas and the said Capitan Johne Rig being baith subiectis to our said darrest broper: And nochtwithstanding, as We ar informit, the freindis and kyn of pe said vmq^{le} Mr Thomas Strauchin hes rasit our vperis letteris, and hes summond pe said Capitan Johne Rig, to compeir befor 3ow in our Tolbuith of Edinburgh, pe xiiij day of Januar instant, in pe hour of cause, to vnderlye our lawis for pe Slauchter of the said vmq^{le} Mr Thomas, albeit it be of veritie, that We nor our Justices can nawyis be Jugeis compitent to pe said Capitan Johne Rig, he being ane Archeour of our said derrest broperis Gaird, and fwa his subiect; befor quhome and his Jugeis he hes bene alreddie tryit: Lyke as, also, the said Capitan Johne Rig being vpoune pe poynt of his voyage, to pafs in France to his seruice, can nocht gudlie attend vpoune pe famin dyett: QUHAIRFOIR, We haifing tane sufficient tryell in pe said mater and of pe proceeding pairof, hes concludit that the said Capitan Johne Rig falbe nawyis trublit in tyme cuming for pe said slauchter. Commanding 3ow, that 3e onnawyis proceid aganis him nor his cawtioner, at pe said xiiij day of Januar instant, nor in na tyme cuming, for pe Slauchter of pe said vmq^{le} Mr Thomas; dischargeing 3ow pairof, and of 3our offices in pat pairt: And for pe said Capitan Johnis mair securitie, cause registre pir presentis in our buikis of Adiornall, *ad perpetuam rei memoriam*, and for 3our Warrant. Subscryuit with our hand, at Halyrudehous, pe first day of Januar, 1602 3eiris.

(Sic subscribitur)

JAMES REX.

To the quhilk it is anfuerit be the said Mr George Strathauchin alias Meirnis, persewar, that the said Letter was ane priuie Letter, and aucht nocht to be admittit.—With the quhilk Letter and anfuer maid thairto, the Justice being throughlie avyfit, admittit his Maiesteis Warrant, and desertit the said dyett: Quhairvpoune the said Mr Thomas Hope askit instrumentis; and the said Mr George protestit, that the admissioun thairof preiuge nocht his persuit in tyme coming.

Treason — Forging and Uttering Base Coin, &c.

Jan. 13.—PATRIK DRUMMOND, in Lenach.

Dilatit of airt, pairt, red, counsale and conceilling of the treffonabill fforgeing, prenting, coinzeing and out-putting of false and adulterat money, fik as false fyve-pund-peices and fyve-schilling-peiceis; quhilkis, fyve yeir senfyne, or thairbye, was coinzeit be Hans Johnestoune, Fleming, and vmq^{le} George Drummond, saidler in Perth, in the kill of Lenach and vpoun the Craigis thairof, of his knowlege and conceilling; ffor the quhilk he ressauit ten false fyftie s. peiceis.

VERDICT. The Affyis, being sworne and admittit; and the pannell accusit be dittay, quhilk wes verefeit be his awin Deposition, and the Depositionis of vmq^{le} Walter Murray in Dunfermling, vmq^{le} George Drummond, saidler in Perth, and vmq^{le} Thomas Glas in Creif, and Thomas Reid, serwand to the said Hans, &c.; they, be the mouth of Andro Naper, merchand, burges of Edinburgh, fand, pronunceit and declarit the said Patrik to be ffylit, culpabill and convict, &c.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair wirreit¹ at ane staik quhill he be deid; and thairefter, his bodie to be brunt in asses; and all his landis, heritageis, coirnis, cattell, guidis and geir to be fforfalt, and be inbrocht to our fouerane lordis vse.

House-breaking — Theft — Horse-stealing.

Jan. 13.—PATRIK MURRAY of Galwald.

Dilatit of the cryme following, viz. Forfamekill as he, being in cumpany with vmq^{le} Mr Williame Balfoure, brother to the Laird of Burlie, vmq^{le} Johne Gyb, Hary Cuik, Johne Oliphant, and vtheris thair compliceis, in the moneth of ffebruar lastbypast, cam, vnder sylence and cloud of nycht, to the duelling hous of Andro Fluikar, in the Brigend of Gairny, and thair brak vp the dur of the said hous, enterit thairin, and steilling furth thairof his haill infycht pleneiffing in ane seak, with ane meir; and had and convoyit the famin away with thame to the place of Strowie. ITEM, for airt and pairt of the thifteous steilling, conceling and away-taking of ane horse furth of ane stabill in the Cannogait-heid, pertening to Toscheoch of Monyvaird; committit twa yeir fyne, or thairby.

VERDICT and SENTENCE. The pannel being 'fylit' by the Affise, the Justice Ordanit him to be tane to ane gibbet standand in the Castell-hill of Edinburgh, and thairvpoun to be hangit quhill he be deid; and ordanit all his movabill guidis to be escheit, &c.

¹ Strangled.

Slaughter.

Jan. 23.—THOMAS JAK, wrycht in Haltoune.

Dilatit, accusit and persewit, fforfamekill as he, accompaneit with Johne Herring in Lang-Forgoun, bodin in feir of weir, with sword and vtheris wappinnis *invafive*, laitlie, vpoun the xxix of Julij lastbypast, haifing confaut ane deidlie feid aganis the said vmq^{le} Alexander, sett vpoun the said vmq^{le} Alexander foirnent¹ his duelling hous, at the Kirk of Forgoune, and thair crewallie hurt and woundit him in the heid, and claif his harne-pan² with swordis, and thairby flew him; and he wes airt and pairt of the slauchter of the said vmq^{le} Alexander Moncur.

PERSEWARIS.

Andro Moncur, sone to the defunct,
Patrik Moncur of Chapelthouse,

Johne Flouris, sifter-sone to the defunct,
Mr Thomas Hammiltoune, (King's Advocate.)

The pannell, nochtwithstanding that he is innocent of the Slauchter of the said vmq^{le} Alexander Moncur, he becummis in the Kingis will for the samyn, and for beiring of pistulettis.

VERDICT. The Assyis, be the mouth of Robert Gyb in Lochthouse, chancillar, ffand the said Thomas Jak to be ffylit, culpabill and convict of airt and pairt of the Slauchter.

SENTENCE. To be tane to the mercat croce of Edinburgh, and thair, his heid to be strikin fra his body, and all his movabill guidis to be escheit, &c.³

Murder—Theft.

Jan. 29.—JAMES CRUIKSCHANK, feruitour sumtyme to Mr David Ogilvie.

Dilatit, accusit and indytit, fforfamekill as he, accompaneit with Andro gounge alias Davidfone, hantand⁴ in Sanct Johnistoun, laitlie, vpoun the fourt day of Januar instant, sett vpoun vmq^{le} Robert Innes, merchand att the Kirk of Inch, one Carnbodd-mure, and thair, in the dawing of the day,⁵ maist crewallie (and) schamefullie Mordreift and flew the said vmq^{le} Robert Innes, be cutting of his thrott: And als, thifteoullie ftall, conceillit and away-tuik fra him his pak,⁶ contening merchand-geir, with his purs and certane money thairin.

VERDICT. The Assyis, be the mouth of Robert Varnour, skynner in Edinburgh, chancillar, ffand the said James to be ffylit, culpabill and convict of the crewall Murthour of the said vmq^{le} Robert Innes; and of the steilling of his pak and purs, with certane money thairin.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit vpoun ane gibet quhill he wer deid; and thaireftir his heid and rycht

¹ Before, immediately opposite to.

² Skull, 'brain-pan.'

³ On the margin, 'Convict et

decollat.'

⁴ Literally, haunting, dwelling, but without any fixed occupation.

⁵ At dawn,

immediately before sunrise.

⁶ Travelling pack, he being what is termed a 'packman,' or small-ware merchant.

hand to be strikin fra his body; to be affixit, the hand in Dundee, and the heid in Carnbodo-mure; and all his movabill guidis to be escheit, &c.

Stouthreif — Cattle-stealing — Horse-stealing, &c.

Feb. 12.—JAMES VALLEM and George Vallem, fonis to David Vallem of Woodwrae.

Dilatit, accusit and persewit, be Dittay following,

FORSAMEKILL as thay, accompaneit with Williame Ogilvie, Williame Cumming, Archibald Douglas, Rikard, Ramfay, and vtheris their complices, commoun thevis and brigandis, in the moneth of Junij, the yeir of God Im.Vc.lxxxxvj yeiris, being bodin in feir of weir, with swordis, secreittis, pistolettis and vtheris wappynnis *invafive*, vmbeset¹ the hie way and passage to Williame young and James Blak, cadgearis,² duelland vpoun the south fyde of the ferrie of Dundie, and to twa of thair fervandis, at the Coittoun of Melgum, lyand within the Sherefdome of Forfar, quhair thay wer dryvand fevin pakis of merchand-geir, on fevin horsis, towardis Brechin, to the fair thair of; quhilkis pakis pertent to Patrick Wedderburne, burges of Dundie, and Johne Alexander, burges of Edinburgh, vmq^{le} John Wrycht, burges thair, and Thomas Allane, tailzeour, burges of the Cannogait; and thair set vpoun thame oppinlie, in day lycht, at xij houris in the day; and, be way of Stouth-reif, violentlie rest, ftall and away-tuke fra the saidis cadgearis, the saidis fevin pakis and fevin horsis; and thifteoullie and masterfullie convoyit the samyn away with thame, togidder with the saidis cadgearis, to the mouth of Glenmoy, and disponit vpoun ane grit pairt of the said merchand-geir, at thair pleasour: AND als, the said James being accusit, fforamekill as he, accompaneit with Williame Cummyng and vtheris his complices, in the moneth of October lastbypast, come to the toune and landis of Auchterlony, pertening to Johne Carnegie, grynter,³ and thair thifteoullie ftall, conceillit, reffett and away-tuke furth thair of, sax oxin and twa ky, pertening to the said Johne Carnegie and James Pittilach his seruand; quhilk thay draif to the North and fauld, at thair plesour. ITEM, the said James indytit and accusit for airt and pairt of the thifteous steilling of ane quhyte horse furth of Mr Williame Gairdyn stabill, Vicar of Abirlemnoch, pertening to Johne Mortimer younger of Flemingtoun, committit foure yeir senfyne, or thairbye. ITEM, the said George Valleme being indytit and accusit for the thifteous steilling, conceilling and away-taking of ane horse fra Johne Kyd.

PERSEWAR.

PRELOQUUTOURIS for the pannell.

Mr Thomas Hammiltoun of Drumcarne, aduocat.

Mr Thomas Craig, Mr Johne Russell.

It is allegeit that the Dittay sould nocht be putt to ane Affise, becaus thay sould be fummond vpoun xv dayes wairning, and thay sould haif ane copy. The Aduocat anfueris, that in respect of the Dittay, quhilk is vpoun thift, the alledgeance aucht to be repellit.

THE JUSTICE findis proces.

¹ Forcibly beset, &c. by stopping or blocking up the way. ² In this sense 'cadgers' were carriers, who travelled through the country with their pack-horses, and were employed by small-ware merchants to transport their goods to fairs and markets. At this period, all distant carriages were effected by means of pack-horses; and (as is the present custom of *carriers*) they usually travelled in companies, for mutual protection and security. The modern term *cadger*, is commonly applied to persons who collect eggs, fowls, butter, &c. from small farmers, &c. and bring them to market for sale. Their present equipage consists of a horse or ass, with *creels*, or panniers, placed across the animal, when foraging and bargaining with small farmers and cottagers; but when they go to market, their accumulated store is commonly brought in carts. ³ Properly, one who keeps or takes charge of a granary or farm. It is sometimes spelt 'grainter, or 'granitour.'

It is allegeit, that this mater, concerning the taking away of the pakis, fould nocht be putt to the knowledge of Affyis, becaus it is ane mater of depredatioun; and be Act of Parliament maid in the tyme of King James the ffyft, cap. xxxvij, all depredatiounis and maisterfull reiffis fould be fyrst Ciuillie discuffit before the Lordis. The Aduocat anfueris, that the faid alledgeance aucht to be repellit, in respect of the Dittay contening Stouth-reif and thift. The preloquutouris takis instrumentis, that thay defyrit to putt thair alledgeance in writt thame felff, and to dyte itt; and that the Justice anfuerit that he, be the auife of the Chancillar, Collectour, Thesaurer, Lord Hereis and vtheris¹

THE JUSTICE Repellis the alledgeance, in respect of the Dittay.

The Pannell takis instrumentis, that na partie comperis to perfew, bot my Lord Aduocat; and na persoune can be putt to ane Affyis, without ane sworne Dittay. The Aduocat anfueris, that he fould nocht sweir.

VERDICT. The Affyis, be the mouth of Alexander Kerfane in Balbethie, chancillar, fand the faidis George and James Vallemes to be ffylit, culpabill and convict of the crymes *respectiue* aboue writtin, laid to thair chairge.

SENTENCE. To be tane to ane gibbet at the mercat croce of Edinburgh, and thairvpoune to be hangit quhill thay be deid; and all thair movabill guidis to be escheit, &c.²

[*Mr William Boirthuik, Justice-Depute.*]

Slaughter — Bearing of Pistolets, &c.

Mar. 3.—PATRIK LORD GLAMMIS; Johnne Lyoun, sone to Johnne Lyoun in Rouchalhill; Johnne Lyoun, sone to Lyoun, burges of Dundie; Johnne Scrymgeoure, Johnne Edmestoune, and Fargus Murray, seruandis to the faid Patrik Lord Glammis; Williame Lyoun, seruand to the faid Johnne Lyoun, sone to Johnne Lyoun in Rouchalhill.

Dilatit for airt and pairt of the Slauchter of vmq^{le} Patrik Johnnestoune of Mof-toun; and for beiring and weiring of pistolettis, contrair the tennour of the Actis of Parliament; committit vpoun the saxt day of September lastbypast.

Comperit Mr Williame Oliphant, and produceit ane Warrant, direct be his Maiestie; quhairof the tennour followis.

REX,

JUSTICE, Justice clark and 3oure deutes, We greit 3ow weill. Forfamekill as the thryd

¹ Assessors to the Justice. The sentence is left unfinished; but it is probable that it referred to the right of the Justice to dictate the 'allegeances' and replies, in cases where the matter was disputed between the King's Advocate and the Counsel for the pannel. ² 'The xiv of Februar, twa brether hangit, viz. David Volume and his brother, for oppressioun and spuilzie.'—*Birrel's Diary*.

day of March nixtocum is appointit and assignit to Patrik Lord Glammiss, and certane his friendis and seruandis for pair comperance before 3ow, to vnderly oure lawis for þe slauchter of vmq^{le} Patrik Johnnestoune; nochtwithstanding, for certane caussis moving ws, it is oure will, and We command 3ow to continew the said dyet, vnto þe tent day of Mairch nixtocum; and that 3e dispens with the personall comperance of the saidis persounes, and tak new caution of þame, that thay fall compeir befor 3ow, the said tent day of March nixtocum. As 3e will ansuer to ws pairvpoun. Quhairanent thir presentis falbe to 3ow ane Warrant. Subscryuit with our hand, At Halyrudhous, the saxtene day of Februar, 1602.

(Sic subscribitur) JAMES R. MONTROIS, Can^{rius}, S. G. HOME,¹ The^r.

Quhilk Precept the Justice admittit.

The quhilk day Sir Johne Murray of Tillybairdyn, knycht, comperand be Mr Williame Oliphant, his Aduocat, be his letteris obligatouris, subscryuit with his hand, at Glammiss, the last day of Februar, 1602 yeiris, become plege and fouertie for Patrik Lord Glammiss, &c. that they fall compeir befor our fouerane lordis Justice or his deputtis, the tent day of Marche nixttocum, &c.

The quhilk day, Johnne Gordoun of Boigis, Sheref-depute of Abirdene, and Johnne Arbuthnett of Carnedaw, oft tymes callit as cautioneris and fouerteis, coniunctlie and feuerallie, for reporting of our fouerane lordis letteris, dewlie execute and indorfat, and persewing thairof, purchest be Margaret Arbuthnett, the relict, Johnne, Robert, Gylbert and Alexander Johnnestounis lauchfull bairnis, with the remanent kyn and friendis of vmq^{le} Patrik Johnnestoune of Mostoune, &c.; lauchfull tyme of day biddin, and nocht produceand the saidis letteris dewlie execute and indorfat, and nane compeirand to persew thame; thairfoir the Justice-deput, be the mouth of James Lowrie, dempstar, decernit the said cautioneris, conjunctlie and feuerallie, to be vnlawit and amerciati, for nocht reporting thairof, and for nocht persuit thairof aganis the said Patrik Lord Glammiss, in the pane of . . . thowsand poundis; and vpoun ilk ane of the remanent sax persounes, in the pane of ane hundreth merkis.²

[*Mr Williame Haert, Justice-Depute.*]

Stealing the Poor's Box of Cockpen — Adultery, &c.

May 21.—WILLIAME NORWALL, scolemaister in Cokpen.³

Dilatit, accusit and persewit, for the thiftious steilling, away-taking and ceceling of the puir folkis box, furth of the Kirk and Seffioun-hous of Cokpen, vpoun the xj day of Apryle lastbypast; quhairin thair wes aucht poundis money, or thairby, gewin in almous to the pure; quhilk he brak vp at the watter-syde, besyde Mountounhall.⁴ ITEM, ffor the cryme of Adulterie, committit fourtene or fyftene yeir fyne, or thairby, with Christiane Dowglas; he haifing ane mareit wyffe, callit Margret Morisoune, than on lyffe.

¹ Sir George Home, afterwards Earl of Dunbar, Lord High Treasurer of Scotland, faurario deliberat.

³ See June 9, 1602.

⁴ Monktonhall?

² 'The-

The said Williame become in our fouerane lordis will; and the Justice, ref-
saueand him in will, ordanit the said Williame to be Baneift this realme, during
all the dayes of his lyffe; and to depairt furth thair of within aucht dayes eftir
the dait heirof, and nocht to returne thairin vnder the payne of deid. And the
said Williame obleift himself to the effect foirfaid; vnder the payne to be hangit,
but Affyse.

Barbarous Murder of a Dumb Young Man.

Jun. 2.—WILLIAME GEIKIE Younger in Kethynnis.

Dilatit for airt and pairt of the crewall Murthour and Slauchter of vmq^{le}
Patrik Cathrow, in Kethinnis ('ane dumb borne young man'); committit vpoune
the xx day of Februar lastbypast.

PERSEWARIS.

Dauid Cathrow, myller at the mylne of Kethinnis, fader-bothor to the defunct; Mr Tho^s Hammiltoune.

PRELOQUUTOIR for the pannel, Mr Williame Oliphant (advocate.)

DITTAY against the Pannell.²

FORSAMEKILL as he, with his complices, being bodin with ane grit sting or rung,³ laitlie, vpoune pe
xx day of Februar, the 3eir of God I^m. Vj^c. ane 3eiris, haifing confaut ane deidlie hatrent, rancour and
malice aganis pe said vmq^{le} Patrik, quha was ane simpill, pure, dum young man, sett vpoune him
within pe toune of Cowper-in-Angus, quhair he wes in sober and quyet maner for pe tyme, doand his
lesfull effairis and buffines, traifiting na ewill, harme, iniurie or perfruit of ony personis, bot to haif leuit
vnder Godis peax, and our fouerane lordis; and pair, crewallie invadit him for his slauchter, hurt and
woundit him with pe said rung on the face and neife, and brak pe girfell of his neife,⁴ to the effusioune
of his blude in grit quantitie; and gaif him diuerse vperis bauch, blae and bludie straikis, vpoun his heid,
bak, wambe and schoilderis; Lyke as, the said Williame Geikie, nocht being satisfeit with pe crewaltie
done to pe said vmq^{le} Patrik Cathrow, in day lycht; he, vpoune pe said xx day of Februar, pe 3eir of God
foirfaid, vnder scylence and cloude of nycht, vmbeset pe hieway and passage to pe said vmq^{le} Patrik, in
the Rasche-myre, lyand betuix Cowper and Kethynnis, as he was in sober and quyet maner passand on
the hie way towardis the toune of Kethynnis, to his said faper-broperis duelling hous pair, dredand na harme
or iniurie to haif bene done to him be pe said Williame, in respect of the bludie woundis gevin to him
ofbefoir; and pair, of new, sett vpoune pe said vmq^{le} Patrik, and with ane rung, best,⁵ straik and dang
him vpoune pe heid, face, bak, fillettis and wambe, and brak his haill intrallis, that it was piteous to
haif hard pe lamentabill routis⁶ and cryis of the pure dum man; and left him nocht, quhill⁷ be pe saidis
crewall straikis he flew and mureift him, and left him deid vpoune pe ground: Committand pairbye
crewall, schamefull and abhominabill Slauchter and Murthour, being ane dumb borne young man,
vnhabill to haif defendit him selff; vpoune sett purpois, provisioune and foirthocht felonye.

The Aduocat protestis for Wilfull Errour, in cais thay acquit, in respect of
the Dittay and taikinnis.⁸

¹ To be hanged without farther Trial.

² This Dittay, it need hardly be observed, has been preserved here chiefly on account of the extraordinary nature of the case, and the remarkable phrases with which it abounds.

³ A large bludgeon or cudgel.

⁴ The *gristle*, cartilage, or flexible part of his nose; perhaps implying also the 'bridge.'

⁵ Beat, Old Fr. *basté*, *basted*. It may be '*best*,' *bast*, a synonymous word.

⁶ Bellowsings, usually applied to the lowing of cattle, especially when impatient to be milked, or to be driven home in the evening. 'The kye stand routin' in the loan.'

⁷ Until.

⁸ Evidence, *tokens*, proof.

VERDICT. Eftir accusatioune of the faid Williame, be Dittay, of the crymes aboue writtin, quhilk he alluterlie denyit, the Affyis, be the mouth of Sampfoune Ker, in Auchterhous, Chancellor, ffand the faid Williame Geikie to be Clene, innocent and acquit of airt and pairt of the crewall murthour and flauchter foirfaid, &c. Quhairvpoune the faid Williame Geikie askit actis and instrumentis.¹

Exercising the Office of Notary without lawful Warrant.

Jun. 9.—WILLIAME NORVELL, scole-maister in Cokpen.²

Accusit and perfewit be Dittay, at the instance of Mr Robert Lyntoune, substitute to our fouerane lordis aduocat, for the crymes following.

DITTAY *against the Pannel.*

FORSAMEKILL as, it is statute be the Actis of Parliament and lawis of this realme, that na maner of persoune gif him self furth for ane Notour, or vse or exerce the office of Notarie, vnles thay be first presentit be his Maiestie, be his hienes Letter of Presentatioune directit to the Lordis of the Seffioune, and thaireftir admittit be the saidis Lordis to the said office, efter tryell; and thair Prothogoll-buik sychtit and markit be the Clark of Register and his deputtis; and gif ony man preswme to do in the contrair, to be pwneist to the death: As the saidis Actis of Parliament at mair lenth beiris. And trew it is, that the faid Williame Norvell hes vfit and exerceit the said office of Notarie, as ane ordinar Notar, in syndrie deidis, fik as in Contractis, Obligatiounis, Seasingis, Requisitionis or Redemptionis; and generallie in all thingis, quhen he was requyrit, continewallie sen the moneth of November, the yeir of God I^m.V^c.lxxxv yeiris, to the day of his apprehensioune; albeit it be of veritie, that he was never admittit to the said office of Notarie; lyke as, he never had his Maiesteis Presentatioune direct to the saidis Lordis of Seffioune, for his admiffioun to the said office; nather had he ane Prothogoll-buik, markit be the Clark of Register or his deputtis, conforme to the ordinance prescryuit be the saidis Actis of Parliament: Quhairin he hes falslie circumvenit and disflaut our fouerane lordis leigis, as ane false disflauear; geveing him self furth to be ane Notour, he being nane: Quhairbye he hes incurrit the panis contenit in the saidis Actis of Parliament.

VERDICT. The Affyis, be the mouth of Robert Smyth, merchand in Edinburgh, Chancellor, ffand the faid Williame to be ffylit, culpabill and convict of the saidis crymes.

SENTENCE. To be tane to ane gibbet, standand vpoune the Castel-hill of Edinburgh, and thairvpoune to be hangit quhill he be deid; and all his movabill guidis to be escheit, &c.

Slaughter.

Jun. 15.—JAMES CWNINGHAME of Glengarnok.

Dilatit of art and part of the slauchter of vmq^{le} Williame Cwninghame, in Walzaird.

¹ It is likely that the Lord Advocate abandoned his writ of Error against the Assise; at least no mention is made of the matter, in the Record. ² See May 21, 1602. Although the former Assise had acquitted Norvell, yet the public prosecutor had set his seal upon him; and, in his next charge, crushed this ill-fated thief, adulterer, and 'fals notour.'

PERSEWARIS, Katherine Crawford, the relict; Gabriell Cwninghame, as brother.

PRELOQUUTOURIS for the persewaris.

The Laird of Cwninghameheid, the Laird of Craigance, Mr Thomas Hammiltoun.

PRELOQUUTOURIS for the pannell.

The Laird of Caprintoun, the Laird of Houftoun, the Laird of Blair, Williame Porterfeild of at
Ilk, Mr Johne Scharp, Mr Williame Oliphant.

The Justice continewis this dyet to the morne, the xvj day of this instant.
(Plegio, Roberto Hammiltoun de Inchemauchan.)

Jun. 16.—The persewar askis instrumentis, that he is reddie to persew,
and will infist conforme to the cautione fundin contrar the Lard of Glengarnok;
and protestis for releif of his cautionar.—The Aduocat declaris, that he will
nocht infist in perfuit, becaus he hes na informatioun of the partie nor the
Thesaurer.—The pannell takis instrumentis, that Gabriell Cwninghame and the
preloquutouris infistis in his perfuit.

THE JUSTICE, being auisit with my Lord Chancellor and the rest of the
Assessouris, declaris, that vpoun occasioun moving thame, will nocht putt this
mater to the knowlege of ane Assyis this day; bot continewis the famin to the
thryd day of the nixt Justice-air of the sherefdome of Perth, or soner, vpoun
(xv dayis warning.)

The Laird of Glengarnok, present, takis instrumentis, that the partie per-
sewar, ratar of the letteris, hes comperit this day judiciallie, and offerit him red-
die to persew; lyke as, the said Laird of Glengarnok, being enterit on pannell,
offeris him to (abide) ane tryell, for the cryme lybellit, according to the law.

Johne Blair of that Ilk becomes pledge and fouirtie for James Cwninghame
of Glengarnok, that he fall compeir, &c.

Slaughter — Stouthreif.

Jun. 24.—JOHNE MURE of Auchindrane.¹

Dilatit of airt and pairt of the slauchter of vmq^{le} Sir Thomas Kennedie of
Culzean, kny^t: And of stouthreif² of his purse, worth ellevin scoir rois-nobillis;
fax dosoun of goldin buttounis; ane ryng of gold, contenand nyne dyamountis set
thairin; his sword, belt and quingar;³ committit the xij day of May lastbypast.

PERSEWARIS, Dame Elizabet McGill, the relict of vmq^{le} Sir Thomas Kennedie of Cullane, kny^t,
James Kennedie as sone, Mr Thomas Hammiltoun of Drumcaine, Aduocat to our souerane lord.

PRELOQUUTOURIS for the pannell, the Laird of Langschaw,⁴ the Laird of Rowallane,⁵ the Laird of
Auchinlek,⁶ the Laird of Blair,⁷ Mr Williame Oliphant, Mr Johne Ruffell.

The Laird of Langschaw takis instrumentis of the entrie of Johne Mure of
Auchindrane; and protestis, that he be relevit, as cawtioun.—The persewaris

¹ See Jul. and Nov. 1608, Feb. 1609, and Jul. 1611. ² Theft accompanied by violence. ³ A
kind of short sword or hanger. ⁴ Sir Niel Montgomery. ⁵ Mure. ⁶ James Boswell.
⁷ John Blair of that Ilk.

takis instrumentis of the productione of the letteris ; and protestis for releve of thair cawtioune.

Compeirit Johne Maister of Orknay, and produceit the Warrant vnderwrittin ; quhairof the tennour followis.

REX,

JUSTICE, Justice Clark and 3our deputtis, We greit 3ow hairtlye weill. Forfamekill as We, vnderstanding, that the xxiiij day of Junij instant is appoyntit be vertew of our vperis Letteris, direct at pe instance of Dame Elizabeth McGill, relict of vmq^{le} Sir Thomas Kennedie of Culzeane, kny^t, and James Kennedie, thair eldest lawfull sone, with concurrence of our Aduocat for our intres ; for tryell of Johne Mure of Auchindrane, and certane vperis personis his complices, for pe crewall murthour and slauchter of pe said vmq^{le} Sir Thomas Kennedie ; committit be pame in pe moneth of Maij lastbypast. And We, willing to be condinglie tryit, for pe pairt of pe said Johne Mure of Auchindrane ; and for better tryell pairof, necessar it is, that the boy callit,¹ quba was directit fra Mayboill to pe said Johne Mure of Auchindrane, as also the boy callit,² quba come to Thomas Kennedie in Bargany, a lytill befor pe committing of pe said murthour, war apprehendit and examinat and tryit, quhilk we vnderstand is nocht 3it done ; and that the saidis twa boyis ar fugitiues ; quhairbye pe veritie is suppressit. Thairfor it is oure will, and We command 3ow, incontinent efter pe sycht heiroyf, 3e continew 3our Court, and all proceeding aganis the said Johne Mure of Auchindrane in pe said mater, quhill the thrid day of pe air ;³ or that he be new summond, be pe pairtie, to pat effect. As alswa, that 3e proceid and minifter justice aganis all the remanent personis contenit in our saidis Letteris comperand, and that war summond to vnderlye our law for the cryme aboue specifeit. And this 3e faill nocht to do, without ony delay. As 3e will ansuer to ws vpoune 3our obedience. Anent the quhilk, pir presentis falbe 3our Warrant. Subscryuit with our hand, at Falkland, the twentie-foure day of Junij, 1602. (Sic subscribitur) JAMES REX.

The said Johne Mure of Auchindrane disassentis to all continewatioun of this mater ; and offerit him reddie to vnderly the law for the crymes aboue writtin.

Sir Neill Montgomerie of Langschaw become pledge and fouirtie for Johne Mure, that he fall compeir the thrid day of the nixt Justice-air of the Sherefdom of Air, or soner, vpoun xv days wairning.

Theft — Shooting of Pistolets — Barbarously Burning a Woman on a red-hot ' Girdill,' &c.

JUN. 29.—ALEXANDER ROWANE, sone to Nicoll Rowane of Sandiedub.

Dilatit of certane crymes of thift, schuting of pistolettis, and for burning of Katherine Huggoune, in the Burnefyde of Saling, vpoune ane girdill.⁴

Comperit James Wynrahame, and produceit the Warrant vnderwrittin ; quhairof the tennour followis.

JUSTICE, Justice Clark and 3oure deputis, and Aduocat, We greit 3ow weill. Forfamekill as pe xxix day of pis instant wes appointit and assignit to Alexander Rowane, for his personall comperance befor 3ow, to haif vnderlyne our lawis for certane odious crymes, att lenth specifeit in pe criminall

¹ William Dalrymple. ² There was only *one* boy. Dalrymple, however, had been prevailed on to change his name several times. This unfortunate youth was afterwards murdered on the Sands of Girvan, by the elder and younger Mures and James Bannatyne, under circumstances of peculiar atrocity. See Jul. 1611, &c. That Case is perhaps one of the most remarkable, in all its parts, of any one on record. ³ The Justice-air of the Sherifdom of Ayr.

⁴ A large circular piece of hammered iron, still in common use in Scotland, in place of an oven, for toasting oat-cakes, &c.

letteris direct pairanent : Thairfore, and for findrie vper our wechtie occasiounes moving ws, especiallie, becaus oure Thesaurer, quha aucht to persew in pat mater, will nocht be present, att pat day : It is our will pairfore, and We command 3ow to continew the said dyett, vnto pe fyrst day of Julij nixt; and in pe meane tyme, that 3e keip pe said Alexander Rowane in fuir waird : As 3e will ansuer to ws pairvpoune. Quhairanent thir presentis salbe 3our warrand. Subscryuit with our hand, att Perth, the xxvij day of Junij, 1602. (Sic subscribitur) JAMES R.

Jul. 1.—THE JUSTICE continewis the mater to the thrid day of July.

PERSEWARIS.

James Stewart, portioner of Sandiedub, Katherine Huggoune, at the Burnefyde of Sawling, Cristian Hammiltoune in Lynmylne, Mr Thomas Hammiltoune for his hienes intres, Mr Johne Gib.

PRELOQUUTOIRIS for the pannell, Mr Vmphra Blyndfscheillis, Mr Alexander Peblis.

DITTAY against the Pannel.

FORSAMEKILL as, the said Alexander, with his complices, in the moneth of Januar lastbypast, come to the landis of Overtoune of Pitvar, and thair thifteouslie stall, concelit, reffett and away-tuke furth thairof, ane gray horse pertening to Robert Tempilman thair. ITEM, for airt and pairt of the thifteous steilling, conceling and away-taking of ane blak kow, fra James Inglis, in the Pow of Adie; committit in the moneth of August or thairbye, the yeir of God Im.Vc.lxxxxvij yeiris. ITEM, for contravening of our fouerane lordis Actis of Parliament, in schuiting of ane pistulet, chargeit with twa bullettis, at the said Cristian Hammiltoune, and schuting of hir throw the courschet¹ thairwith; committit in the moneth of August lastwas. ITEM, fforfamekill as, he and his complices, in the moneth of December or thairbye, the yeir of God Im.Vc.lxxxxvij yeiris, come to Katherine Huggoune duelling-houfe, at the Burnefyde of Sawling, and thair put violent handis in hir persoune, and sett hir bair erse vpoune ane reid hett² girdill, standand vpoune ane ingill;³ held her perforce thairon, quhill⁴ ane grit pairt of the flesche of hir hipis was brunt. ITEM, for airt and pairt of the thifteous steilling of certane blak aittis fra the said James Stewart; committit in the moneth of Februar lastwas. ITEM, for commoune thift and commoune reffett of thift.

Jul. 3.—The pannell takis instrumentis, that thair is na persounes compeiris to persew, except the persounes aboue writtin; and farther, that nather Johne Broune in Fairnyherst, James Gibsoune, Agnes Rowane, Johne and Thomas Hornes, compeiris nocht to persew, nather to informe my Lord Aduocat.—Alledgeit for the pannell, that the burning of Katherine Huggoune is nocht relevant, and aucht nocht to be put to ane Assyis, becaufe scho was nocht brunt to the deid.—The Aduocat ansuerit, that this being ane extraordinar and odious cryme, the attempting of it, and proceding to the verie executioun, be setting of hir vpoune ane burning girdill, as *conatus cum effectu*, mereittis the deid,⁵ and aucht to pafs to ane Assyis.

THE JUSTICE ordanis this matter to be (put) to the knowlege of ane Assyis.

The Aduocat takis instrumentis of the fwering of the Assyis; and also of the fweiring of that poynt of the Dittay concerning Cristian Hammiltoune, of schuting of hir with ane pistulet throw the hair of the heid: And further, of the

¹ Often spelt *courche*, or *curchey*, a sort of cap or *mutch*, shaped to the head like a close hood, but the back part so formed as to descend on the shoulders, and a little over the ears. Old Fr. *couvrechef*. ² Red-hot. ³ Fire. ⁴ Until. ⁵ The punishment of death.

fweiring of Katherine Huggoune, concerning the burning of hir vpoune the girdill ; and of the fweiring of James Stewart, of the pairt of the Dittay concerning him, aganis Alexander Rowane.—The Aduocat protestis for Wilfull Errour aganis the Affyis, in cais thay clenge,¹ in respect of the notorietie of the crymes laid to his charge, and of the fwering of the Dittay be the perfewaris.

VERDICT. The Affyis, be the mouth of Daud Bruce of Brathieburne, Chancellor, ffand, pronunceit and declarit the said Alexander Rowane to be ffylit, culpabill and convict of the haill crymes and poyntis of Dittay aboue writtin.

SENTENCE. For the quhilk caus, the Justice, be the mouth of Walter Pirie, dempstar, decernit and ordanit the said Alexander Rowane to be tane to ane gibbet, standand vpoune the Castel-hill of Edinburgh, and thairvpoune to be hangit quhill he be deid ; and all his movabill guidis to be escheit, &c.

Barbarous Murder, &c.

Jul. 3.—PATRIK STEWART, in Innervak.

Dilatit, accusit and perfewit be Mr Thomas Hammiltoune of Drumcarne, aduocat to our fouerane lord, for his hienes interes, of the crymes following, to wit.

DITTAY *against the Pannell.*

FORSAMEKILL as he, accompaneit with Stewart, his brother, and Allester Reoch, his serwand, laitlie, in the moneth of November, the yeir of God Im.Vj^e. yeiris, haifing confaut ane deidlie malice aganis vmq^{le} Angus Dow McEwir, his serwand, for alledgeit abusing of Stewart, his dochter, in fornicatioune, tuke and apprehendit the said vmq^{le} Angus, band him hand and fit as ane malefactour, brak his rycht leg with ane ax, and thaireftir, with ane scharpe knyffe or durk, cuttit away his secreit memberis fra him, and put in het assis and emmeris² in the bag of his secreit memberis, quhilk reftit vncuttit ; and crewallie demanit, hurt and woundit him thairbye ; and thairefter kuint³ him on horsbak, and convoyit him to the toune of Blair-in-Atholl ; quhair the said vmq^{le} Angus tuke bed, and continewand bedfast, in grit dolour and diseas thairof, be the space of fyve dayes or thairbye ; at last, he, in the said moneth of November, deceiffit, be the said crewall handling ; and swa was crewallie and vnmercifullie flane be thame : The said Patrik being airt and pairt of the said crewall slauchter ; the lyke of the quhilk crewaltie and tyrannie was never hard to be committit within this cuntrey, nather in hieland nor lawland.

PERSEWAR, Mr Thomas Hammiltoune of Drumcarne, aduocat.

PRELOQUUTOURIS for Patrik Stewart, Mr Johne Ruffell, Mr Alexander King.

Williame Stewart of Tullich takis instrumentis of the entrie of the said Patrik ; and protestis, that he, as his cautioner, be relevit ; quhilk wes grantit.

The pannell denyis the cryme ; quhairvpoune his preloquutouris takis instrumentis : As also the pannell takis instrumentis, that na partie compeiris to perfew, except our fouerane lordis Aduocat ; or that na persoun fwoir the Dittay.

¹ Cleanse, acquit.

² Hot ashes and live-embers.

³ Cast, tossed.

ASSISA.

Johne Stewart Neilsoune in Fofs, Alexander Robertsoune of Fas- Duncan Robertsoune of Glen-
 Williame Stewart in Duntulleich, calze, gennet,
 Johne Tarlasoune, apperand of Johne Farguesoune, callit Bar- Mr Robert Rois of Craigie,
 Moineis, rounne Farguesoune, Duncan Robertsoune of Pitcastell,
 Tarloch Robertsoune in Calie- Johne Farguesoune in Cluny, James Robertsoune of Killischawie,
 bruer, Daid Barroune in Faudowie,¹ Andro Boyd, portioner in Litill
 Robert Robertsoune of Strowan, Alexander Stewart in Bischoprie, Dunkeld.

The Aduocat protestis for Wilfull Errour, in caise thay acquit, in respect of his awin Confessioune; quhair he confest, that he wald haif slayne his brother, for the latting of the said vmq^{le} Angus gang.

VERDICT. Eftir accusatioune of the said Patrik be Dittay, quhilk was verifeit be his Depositionis, the Affyis, be the mouth of the said Chancelar, ffand, pronunceit and declarit the said Patrik Stewart to be fylit, culpabill and convict of airt and pairt of the slauchter of vmq^{le} Angus Dow M^cEvir.

SENTENCE. To be tane to ane place besyde the mercat-croce of Edinburgh, and thair his heid to be ftrykkin fra his bodie; and all his movabill guidis to be escheit, &c.

THE famin day, George Leslie Capitan of Blair, Neill Stewart in Fofs, Robert Stewart in Faucaftell, Alexander M^cIntosch in Tirenne, George M^cIntosche, his brother, Alexander Stewart in Bohefpik, John Butter in Eifter Dunfallandie, Andro Burt, eldar in Cult, Johne Stewart M^cRobert in Archgowll, George Nasmyth in Laclache, and James Nasmyth off Inwar, vnlawit, ilk ane of thame in the pane of ane hundreth markis; for nocht compeiring and passing vpoune the Affyise, &c.

Rapt and Ravishing — Besieging House of Auchmedden, &c.

Jul. 6.—JAMES CHENE of Pennan.²

Dilatit of the Rapt and Reveisching of Mariorie Cuke, dochter to Williame Cuke in Vrinach: And siclyke, for the asslageing of Gilbert Baird of Auchmedden (his) house: And for schuting of pistolettis at Liliass Baird, and causing of hir pairt with barne; and vtheris crymes.

PERSEWARIS, Mr Thomas Hammiltoune, Williame Cuik of Vrinach, for Mariory.

PRELOQUUTOIRIS for the pannell.

Mr Thomas Craig,

My Lord Home,

My Lord Sanquhar,

The Laird of Donypaice,

Mr Johne Ruffell,

Mr Alexander King.

DITTAY against the Pannel.

FORSAMEKILL, as it is expresse provydit, statute and ordanit be our fouerane lordis Actis of Parliament, maid in the tyme of his hienes predicessouris, that na maner of man commit Rapt or Reveisch-

¹ This person's name affords an instance of the difficulty and uncertainty of Genealogical enquiries, and the immense research requisite for tracing Family-pedigrees, especially in the North of Scotland. He is here described as 'David Barroune in Faudowie;' when chosen Chancellor of the Assise, he is designed 'David Farguisoun, Barroun of Faudowie;' and he subscribes the verdict of the Assise, 'DAVID M^cDUF OF FAUDOUY!' Another person in the same Assise, 'Johne Farguesoune, callit Barroune Farguesoune,' still farther illustrates this remark, regarding the labour and indefatigable industry which must be displayed by the correct Genealogist and Historian. ² See Jul. 9, 20, and 30. The pannel was brother of Patrik Chene of Essilmonth, a person of considerable note and influence.

ing of wemen, vnder the panis contenit in the saidis Actis: And trew it is, that James Chene of Pennan, accompaneit with Alexander Chene, sone to Williame Chene in Orcheartoune, Geddes and Thomas Daidfoune, feruitour to Patrik Chene of Effilmonth, accompaneit with diuerse vtheris thair complices, with conuocatioune of his hienes liegis, to the nowmer of twelf personis or thairbye, all bodin in feir of weir, with secreittis, plait-flevis, gantilettis, steil-bonnettis, swordis, dagis and pistolettis, expresse prohibite to be borne, worne, vsit or schot with, be his hienes Actis of Parliament and Secreit Counsale, vnder diuerse panis contenit in the samyn, laitlie, in the moneth of July, the yeir of God Im.V^c.lxxxxvij yeiris, come, be way of Hamefuckin, vnder scylence and cloude of nycht, to the said Williame Cuke duelling-hous in Vrinach, lyand within the Sheref dome of Abirdene, quhair the said Mariorie Cuke was, in sober and quyet maner for the tyme, doand hir lefull effairis and buffines, traisting na ewill, harme, iniurie or perfuit of ony personis, bot to haif leuit vnder Godis peax and our fouerane lordis; and thair pat violent handis in hir bodie, take hir captiue and presoner, and perforce reveischit,¹ and convoyit hir away with thame to the said James Chene duelling-hous in Pennan; quhair the said James deforcit and abusit hir bodie, and held and detenit hir in captiuitie within the said James house, be the space of xij dayis or thairbye; vsurping thairbye our fouerane lordis autoritie vpoun thame, in taking of the said Mariorie, his hienes frie liege but² commissioun or autoritie: And fwa, he being airt and pairt of the saidis crymes, hes contravenit the tennour of the saidis Actis of Parliament, in rapt and reveisching of the said Mariorie, being than ane virgyn; and hes incurrit the panis contenit in the saidis Actis, quhilkis aucht and suld be execute aganis him with all regour, in exampil of vtheris to commit the lyke in tyme cuming.

The pannell being³ desyrit quha wald infist in this perfuit, The Aduocat declaris that he infistis, togidder with Williame Cuik, fader to Mariory Cuik: And the said Mariorie, being chargeit to infist, sche is excusit, be Testimoniall of the Minister, that sche is lyand in chylde-bed-lair.

ITEM, ffand that my Lord Aduocat has interes to perfew, albeit that the principall letteris ar nocht rasit at his instance, for the Reveisching of Mariory Cuik; the Walkning⁴ being rasit in my Lord Aduocattis name, nocht contenand Mariory Cuikis name.

The Aduocat takis instrumentis, that he passis fra the wordis, 'as administratour, tutour, gyder and gournour,' and kepis the wordis 'as fader.'

THE JUSTICE ffindis Williame Cuik, as fader, hes interes to perfew for the iniurie done to his dochter; albeit sche wes of perfyte aige quhen the principall Summondis wes rasit, and is nocht present to perfew.

The said Mr Johne Russell preloquutour desyris, that his alledgeance may be recordit be writt.

It is alledgeit, for the pairt of James Chene, that he aucht nocht be putt to ane Assyise for the reveiffing of Mariory Cuik, becaus he opponis *exceptio spontanee voluntatis* aganis the force and violence; as he, being fyrst mareit with Katherene Ruthirfurd his spous, and insafar as it is offerit to be provin, before the tyme lybellit, that the said James had carnall deill with the said Mariory; and thairefter, in respect of the familiaritie betuix him and hir freindis, sche

¹ Carried away by force.² Without.³ Having?⁴ Process of Wakening.

frelie, of hir awin meare will, cam to the said James, in cumpany with Marioune Cullen and Helene Quhyte, remanit in his hous be the space of xiiij dayis altogether, he being absent all the tyme furth of the said hous, and sche mycht haif returnit to hir faderis hous att hir pleasour, it being distant bot ane myle or twa att the farrest, hir fader and freindis haifing acces to hir; the said James being absent be the space of xxxij mylis att the leift, purposlie fend to Abirdene to by hir clathis; during the quhilk tyme sche nocht only administrat hir effairis, bot tuik of hir kiftis and coifferis sic geir as sche pleasit, quhilk thaireftir wes ressauid aff hir hand be hir fader and mother: Quhilk being done, sche wes perswadit be hir fader and Rychart Vgiftoune to affirm, that sche wes reveist, and sche sould gett geir fra him for hir aduancement. In respect quhairof, the said alledgeance being verefeit presentlie, the mater can nawis be putt to ane Assyis; att the leift, this exceptioun and tryell thair of man be tane coniunctlie with the lybell; and takis instrumentis, that thay offer presentlie to verifie the said alledgeance, before the mater be putt to ane Assyse.

The Aduocat alledgis, that the alledgeance aucht to be repellit, in respect of the fummondis; and na probatioun can be ressauid in the mater, be the Justice.

THE JUSTICE, with auise of his Assessoris, repellis the alledgeance, in respect of the fummonds.

The pannell protestis, that nochtwithstanding thair alledgeance be repellit *hoc loco*, that thay may haif place to verifie the said alledgeance to the Assise.

THE JUSTICE continewis this mater to the nynt of July.

PRELOQUUTOIR for the pannell, My Lord Erle of Crawford.¹

Jul. 9.—Allegeis, that the bering of pistolettis or schuting thairwith, can nocht be put to ane Assyse, becaus thair is Commiffioun grantit to the Laird of Effilmonth¹ and vtheris thairin contenit, to tak the Laird of Troupe and vtheris, in quhais cumpany the said James wes present, att the executioun of the said Commiffioun; vnder protestatioun, he affermis nocht that he wure pistolettis, att the tyme lybellit; and producit the Commiffioun.—The Aduocat allegeis, that the alledgeance aucht to be repellit, in respect of the Commiffioun grantand na Commiffioun to the said James Chene; nather wes he desyrit be the Commiffioun, att the tyme lybellit, to assist thame.—Allegeis James Chene, that gif he wure ony pistolettis the tyme libellit, he did na wrang; vnder protestatioun, becaus his Maiestie directit his Commiffioun to certane his Commiffioneris, speciallie to Patrik Chene of Effilmonth, his brother: Quhilk Commiffioun is ane sufficient to him to beir pistolettis; and gif ony wyis he hes borne or worne the saidis pistolettis, it wes done with his said brother and vtheris his Commiffioneris, in executioun of the said Commiffioun.—The Aduocat alledgeis that

¹ In addition to those formerly entered.

² Patrik Chene, brother of the pannell.

the faid alledgeance aucht to be repellit, in respect of the Commiffioun berand na anfuer.—Anfuerit the pannell, the Commiffioun gevis ane Warrant to convocat the Kingis liegis.

THE JUSTICE Repellis the alledgeance, except that thay instantlie verifie that he wes with the Commiffiouneris the tyme lybellit; and that thay wer in the executioun of thair officeis.

ASSISA for the Reveiffing.

Alexander Fairlie of Braid,	Robert Flescheour, burges of	Williame Bandene, alias Ruth-
Johne Traill of Blebo,	Dundee,	vene, 3ounger of that Ilk,
Johne Johneftoune, callit Johne	Patrik Lyoune, merchand, burges	Hector Rae, merchand, burges
of Elphinstoune, burges of Edr,	thair,	of Edinburghe,
Andro Logane of Grantoune,	Gabriell Merfer, burges of Perth,	Thomas Somervell, merchand,
Alexr Wod of Lammielesham,	Mr Daid Home, brother to the	burgess thair,
David Kynneir of that Ilk,	Laird of Wedderburne,	Mr Archebald Wilkie, in the
Johne Fairlie of Comeiftoune,		Cannogait.

The Affyis being fworne, and the Dittay red, my lord Aduocat produceit for takyn,¹ Letteris of Horning aganis the faid James; quhair the faid James gaid² to the horne, for the rapt and reveiffing of the faid Mariorie Cuke; and als produceit ane proces of the Presbiterie of Deir, fynding the faid James gyltie of the faid cryme; and als vfit the faid Williame Cuke ayth, to be gewin, quha wes present to offer his aith.³

Repellis the foure-half-about.

It is allegeit that *Williame Cuik* can nocht gif his aith, becaus the deid wes nocht done to him; and his dochter is absent. *Secundo*, he can nocht gif his aith, becaus that he offeris him to prove, that sen the last Court, the faid Williame offerit to compeir at the bar, and fueir that the reweiffing is nocht of veritie.—The Aduocat takis instrumentis, that he repetis the Interloquutour pronunceit, that Williame Cuik had guid interes to perfew in this caus, and that he offeris him reddie to fweir the Dittay; in respect quhairof, and of the Letter of Hoirning produceit aganis the pannell for the faid cryme, and of the proces and sentence gewin aganis him be the Presbiterie of Deir, for this famin caus; gif the Affyise clange, protestis for Wilfull Errour.

The pannell askis instrumentis, that gif the King and Kirk wer satisfeit, he wald forgif the faid James. The pannell takis instrumentis, that Williame Cuik declaris that he can nocht, of his conscience, ffyle or clange the faid James, bot⁴ Mariorie Cuik his dochter tuik vpoun hir conscience, that the faid James tuik hir away and reveiffit hir.—The Aduocat thaireftir produceit the faid Wil-

¹ Token, or proof.
evidence upon oath.

² Went, suffered himself to be put to the horn.
⁴ Unless, except.

³ Testimony, or

liame Cuikis Depositionis, maid before the Counfall, quhairvpoun he askis instrumentis.

The pannell askis instrumentis that the Aduocat vſes na forder probatioun. *Item*, James Chene produces ane Testimoniall, ſubſcryuit be Dauid Howiefoun, Miniſter of Abirdowr, teſtifeing, that the witneſſes contenit in the proces produceit aganis James Cheyne, teſteſeit na reveiffing.—The Aduocat takis instrumentis, that Mr Johne Ruſſell produceis and gewis in the Testimoniall ſubſcryuit be Mr Dauid Howiefoun, Miniſter of Abirdowr. The ſaidis Maiſteris Thomas Craig, Alex^r King, and Thomas Craig (Johne Ruſſell) vſes the ſaid Testimoniall, as preloquutouris for James Chene, quhilk wes ſend to thame be Mr Alex^r Cheyne amangis the reſt of his writtis, to be vſit in Defence of the ſaid James Cheyne.—The Aduocat produceit ane vther Testimoniall, ſubſcryuit and writtin be the ſaid Dauid Howiefoune, teſtifeing the ſubſcriptioun of the vther Testimoniall to be falſ.

SPECIAL VERDICT. The perſones of Affyſe being choſin, ſworne and admittit, and the ſaid James being accuſit be Dittay of the crymes foirſaidis; and our ſouerane lordis Aduocat, for verificatioun thair of, haifing produceit to thame our ſouerane lordis Letteris, purcheft at the inſtance of the ſaid Meriorie Cuke and Williame Cuke, hir father; be the quhilkis the ſaid James was denunceit rebell and putt to the horne, in default of fynding of fouirtie, that he ſuld haif comperit befor the Juſtice or his deputtis, to haif vnderlyne the law for the ſaidis crymes; and als, haifing produceit the Extract of the proces led and deducit aganis the ſaid James, for the away-taking and violent reveiffing of the ſaid Meriorie Cuk, befor the Preſbiterie of Deir, the fourt day of Auguſt, the yeir of God 1597 yeiris, Mr Duncan Dauidfoun being Moderatour; togidder with the Depoſitionis maid be the ſaid Williame Cuke, at Falkland, the firſt day of July inſtant, in preſence of my Lord Chancellor, Theſaurer, Biſchops of Roſs and Dunkeld. Aganis the quhilkis writtis and verificatioune, the ſaid James Cheyne and his preloquutouris maid diuerſe alledgeanceis for elyding of the ſamyn, and anſueris maid thairto be the Aduocat; the ſaidis perſonis of Affyis removit altogidder furth of Court to the Counfall-hous, quhair thay, efter cheſing of the ſaid Dauid Kynneir of that Ilk chancellor, &c., ſſand, pronunceit and declarit the ſaid James Chene to be Clene, innocent and acquit of the rapt and reveiffing of the ſaid Meriorie Cuik, dochter to Williame Cuik in Vrinach; and of detening of hir in captiuitie, be the ſpace of xij dayes; and of the deſorceing of hir, committit in the moneth of July, the yeir of God 1^m.V^c.lxxxxvij yeiris:¹ And als ſſand, pronunceit and declarit him to be ffylit and convict of the lying with hir in the place of Pennan, at the tyme foirſaid, without violence, Quhairvpoun the ſaid James askit actis and instrumentis.

THE JUSTICE continewis the nixt dyet to xx day of this moneth.²

Treason — Forging Mark-pieces.

Jul. 13.—ALEXANDER REID, cuiltar in Edinburghe.

Indytit, accuſit and perſewit, fforſamekill as he, being ane prentar in our ſouerane lordis Coinzie-hous thir diuers yeiris bygane, and haifing the credite to

¹ 1597. This method of marking the year aroſe from the mode of expreſſion then in uſe, viz. ‘Ane thouſand fyue hundreth, thre ſcoir ſeuintene 3eiris.’ ² See Jul. 20, 1602.

his hienes trew coinzie, ffor the quhilk the Maister-coinzeour fatisfeit him honestlie and payit him for his panis; nochtwithstanding thair of, he, vnmyndfull of his dewtie, fyrst to God, nixt to his Maiestie, and last to the said Maister-coinzeour, the said Alexauder Reid, vpoun the xxviij day of Junij lastbypast, gatt ane fals half-merk-peace of copper prentit, with the ballance on the ane fyde, fra Cristian Reid, spous to Dauid Lowriestoun, in Corstorphene; and als bocht ane fals batterit peace, blank but prent,¹ fra Williame Smyth, seruitour to William Weylandis, lorymer,² burges of Edinburghe, vpoun the fyrst day of July instant; the quhilkis twa fals pecis, he, vpoun the thryd day of the said moneth of Julij instant, maist treffonablie prentit, fforgeit and past his Maiesteis trew prenting irnis with the prent of the mark peace; and thairby hes committit Treffoun.

ASSISA.

Williame Stalker, goldsmyth,	James Lethingtoun, juster in the	Robert Thomfoun, goldsmyth,
burges of Edinburghe,	Coinzie-hous,	burges of Edinburghe,
Alex ^r Bruce, cuitlar, burges thair,	Dauid Lyndfay, smyth, burges of	Robert Tailzefair, cuitlar in Leith
Williame Myller, meltar in the	Edinburghe,	wynd,
Coinzie-hous, ³	James Mynto, forgear in the	George Seytoun, forgear in the
Thomas Myller, cuitler, burges	Coinzie-hous,	Coinzie-hous,
of Edinburghe,	Walter Mathie, forgear thair,	Moreis Gray, forgear thair,
Johne Quhyte, cuitler,	Patrik Schaw, prentar thair,	Williame Sinclair, forgear thair.

VERDICT. The Affyis, be the mouth of the said Patrick Schaw, chancillar, ffand, pronunceit and declarit the said Alexander Reid to be ffylit, culpabill and convict of the treffonabill prenting of twa mark pecis, vpoun his Maiesteis trew irnis, as his hienes trew coinzie.

Jul. 20.—SENTENCE. The Justice, be the mouth of Walter Pirie, dempftar, decernit and ordanit the said Alexander Reid to be tane to the Castelhill of Edinburghe, and thair to be hangit quhill he be deid; and all his movabill guidis to be escheit, &c.

Jamesucken — Besieging House of Auchmedden — Adultery.

Jul. 20.—JAMES CHENE in Pennan.⁴

The quhilk day, James Chene being enterit on pannell, dilatit, accusit and persewit of the crymes efter specifeit, thay ar to say,

For contravening of our souerane lordis Actis of Parliament, in beiring and weiring of hagbuttis and pistolettis vpoun his persoune, and in his cumpany, oppinlie, outwith houffis, in the monethis of September, October, November, December, Januar, Februar and Marche, the yeir of God 1597, vpoun the landis of Pennan, Auchmedden, and diuerse vtheris boundis, within the sherefdom of Abirdene. ITEM, fforfamekill as he, accompaneit with diuerse vtheris, his complices, forneris and brokkin men, all bodin in feir of weir, with hagbuttis and pistolettis and vtheris wappynnis, *inuafue*, incontrair the tennour of the Actis of Parliament, laitlie, in the moneth of Marche, the yeir of God

¹ Without any impression.
generally dealt in saddlery.

² Old Fr. spur-maker, *lormier*.
³ The Royal Mint.

Lorimers, besides selling small iron wares,
⁴ See Jul. 9, 1602.

1597, haifing confaut ane deidlie feid, rancour and malice aganis Gilbert Baird of Auchmedden and Liliias Baird his spous, come, be way of Hamefuckin, vnder fcyence and cloude of nycht, to the faid Gilbertis duelling-place of Auchmedden, quhair the faid Liliias Baird was for the tyme, in sober and quyet maner, accompaneit with hir bairnis and ferwandis, hir husband being abfent, and thair clam¹ the cloife dykes of the faid place, pullit out the ftainchellis² of the kitchen wyndoys, brak vp fum duris, and affageit the faid Liliias and hir ferwandis within the faid place, be the fpace of thre houris or thairbye; clam vp to the tops of thair houffis, kaift in ftanes at the chymnay heid, fchot in hagbutis and piftolettis at the duris and wyndoys of the faid place; fchot the faid Liliias throw the claythis, fcho being grit with barne;³ ffor feir of the quhilk fchot, fcho fchortlie thairefter pairtit with the faid barne,⁴ quhilk was crewallie flane be the faid James; and fwa, ye committit Hamefuckin, Affageing of houffis vnder fcyence and cloude of nycht, and hes contravenit the tennour of the faidis Actis of Parliament, in beiring, weiring and fchuting with hagbuttis and piftolettis. ITEM, for contravening of our fouerane lordis Actis of Parliament in abufing of his bodie in notour Adulterie, with Mariorie Cuke, dochter to Williame Cuke in Vrinot, within his awin duelling-place of Pennan, in the monethis of July and Auguft, the yeir of God 1597, he being mareit with (Katherine) Rutherford, his spous, and being vndeorceit.

The faid James declarit, for obedience of his Maieftie, that nochtwithftanding that he was maift innocent of the faidis crymes, and that he may vfe his lawfull defence aganis the famyn, he vald become in our fouerane lordis will; provyding alwayes his lyffe may be faiff: Quhairvpoune the faid Mr Thomas Hammiltoun, and als the faid James Chene, askit actis and instrumentis.

Jul. 30.—The Juftice producit HIS MAIESTEIS WILL, quhair of the tennour followis.

REX,

JUSTICE, Juftice clark and 3our deputtis, We greit 3ow hairtlye weil: fforfamekill as James Chene of Pennan, being accufit before 3ow for findrie crymes, he voluntarlie become in our will, for pe cryme of Adulterie and fyndrie Oppreffionis committit be him. Heirfoire it is oure will, that 3e fall gif furth dome aganis pe faid James, that he fall be Baneifchit this cuntry, and fall nawyis retorne within the fame, without oure Licence, vnder pe pane of death, to be incurrit be him, and of pe fowme of thre thowfand markis to be incurrit be his cautioner, quhome 3e fall ordane him to fynd for his remaning furth of pe cuntrey; and that befor he be put to libertie. Quhairanent thir presentis falbe to 3ow ane fufficient Warrant. Subfcryuit with our hand, At Falkland, pe xxvij day of Julij, 1602.

(Sic fubfcribitur) JAMES REX.

The quhilk Will the faid Juftice-depute pronunceit, &c.; and the faid James askit actis and instrumentis.

Slaughter — Shooting of Hagbuts and Pistolets.

Jul. 21.—DAVID GRAHAM of Craig, and Alexander Kennedie of Balarrak.

Dilatit of art and part of the Slauchter of vmq^{le} Richard Spens, feruitour to Johne Erle of Caffillis; and for beiring and weiring and fchuting of hagbuttis and piftolettis; committit in December.

¹ Climbed.

² Iron stancheons.

³ Pregnant.

⁴ Miscarried.

PERSEWAR, Mr Thomas Hammiltoun of Drumcarne, aduocat.

PRELOQUUTOIRIS for the pannell, Mr Thomas Craig, Mr Alexander King.

Comperit Rychard Spens as fader, Spens and Spens, as brether to vmq^{le} Rychard Spens, and declarit thay wald nocht infist in persuit of Daid Grahame of Craig, att this present, and att na tyme heireftir ; and als desert. The said Daid Grahame declaris, he offeris him reddie to vnderly the law, for the crymes contenit in the letteris.—The said Rychard Spens and his sonis desyrit that the persuit of Alexander Kennedie sould delay, quhill thay may haif tyme to fummond ane Affyis.—The said Alexander Kennedie takis instrumentis that he offeris him to vnderly the law, for the crymis lybellit ; disaffenting to all continewatioun now, as ofbefore.—‘ DESERT’ as to Grahame : And as to Kennedie, continued to the Justice-air of ‘ Air, tertio Itineris.’

Adultery.

Aug. 19.—ELSPET HEISLOP, lait fervand to Archibald Bauld, indueller in Edinburghe.

Dilatit and accusit for contravening of our fouerane lordis Actis of Parliament, in abusing of her body in the filthie and abhominable cryme of Adulterie with Daid Gray,¹ fischmunger in Edinburghe ; committit in the monethis of March, Apryle, Maij, Junij, Julij, August, September, October, November, December, Januar and Februar, in the yeiris of God 1594-5-6-7-8-9, 1600 and 1601 yeiris, att the leift, in ane or vther of the saidis monethis and yeiris *respectiue* foirsaid ; and that within the burcht of Edinburghe, att the West-port thairof and vtheris pairtis, about the said burch : In the quhilk cryme sche hes procreatt and borne to the said Daid foure findrie bairnis, quhairof twa deceiffit this lyffe, vnbapteift ; and ane is yit on lyffe, vnbapteift.

Quhilk cryme the said Elspett confest, and become in our fouerane lordis will for the famin.

(Nov. 27.)—SENTENCE. The Justice ordanit the said Daid Gray and Elspeth Hislope to be kairtit throw the Toune, and ane paper vpone thair heid, contening thair cryme : And to be banischit the said burgh ; and nocht to return thairin, during all the dayis of thair lyftyme, vnder the pane of deid.

Slaughter.

Nov. 10.—JOHNE CONGILTOUNE, gairdner, in the Plesance (of Ed^r.)

Dilatit of art and pairt of the Slauchter of vmq^{le} George Spottiswod, brother-german to vmq^{le} Ninian Spottiswod of that Ilk ; committit in Junij 1588 yeiris.

¹ See Jan. 12, 1602.

PERSEWAR, Agnes Spottifwood, onlie dochter to the said vmq^{le} George.

PRELOQUUTOIR for the pannell, Andro Blak.

The said Johne Congiltoune allegeis that this mater can nocht pass to ane Affyis, in respect he hes our souerane lordis Remiffioun, grantit for the slauchter of the said vmq^{le} George, vnder our souerane lordis Previe Seill, of the dait, at Edinburghe, the thrid day of Marche, the yeir of God 1588. And als, producit ane Letter of Slaynis, grantit be Williame Spottifwod of that Ilk, Mr Johne Spottifwod his father-brother, Williame Spottifwod, Alexander Spottifwod and Spottifwod, brether to the said vmq^{le} George, and Cristian Thomesoune, the relict of the said vmq^{le} George, to the said John Congiltoune, daitit at Edinburghe, the xxij day of Februar 1588.

Dauid Corfbie, merchand burges of Edinburghe, James Daidfoune, flescheour burges thair, become cautioneris and fouerteis, coniunctlie and feuerallie, to fatisfie the partie persewar, as law will; Lykeas, that he fall pass the said Remiffioun the Grit Seill, vnder the pane of ffourtie pundis.

Slaughter — Shooting of a Pistolet.

Nov. 19.—WILLIAME WAUCHOPE, sone lauchfull to vmq^{le} Johne Wauchope, baillie of Nudrie.

Dilatit of airt and pairt of the Slauchter of vmq^{le} Johnne Symfoun, messinger in Edinburghe; committit in the moneth of October or thairby, the yeir of God 1^m.V^c.lxxxxix yeiris. ITEM, for contravening of our souerane lordis actis of Parliament, in schuiting of ane pistolet at James Wadie, sone to vmq^{le} Wadie, wrycht.

VERDICT. The Affyse, be the mouth of Archibald Geddes elder, burges of Ed^r, chancellor, ffand, pronunceit and declarit the said Williame Wauchop to be Giltie and ffylit of the saidis crymes *respectiue* aboue writtin.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair hisheid to be strukkin fra his body; and all his moveabill guidis to be escheat, &c.

Child-murder.

Nov. 27.—AGNES COWANE in Corstorphin.

Dilatit for the crewall Murthour and Slauchter of ane young infant barne, procreat be her to George Kyle, feruitour to the Laird of Corstorphin.

VERDICT. The Affyse, be the mouth of Patrik Home of Polwart, chancellor, ffand, pronunceit and declarit the said Agnes to be culpabill and convict of the saidis crymes.

SENTENCE. To be tane to the Castelhill of Edinburghe, thair to be hangit vpone ane gibbet quhill scho be deid, and all her moveable guidis escheit, &c.

Adulterating and Uttering Base Coins, &c.

Dec. 15.—ALLANE NAPER, culteller in Glesgw.

Dilatit ffor the tressonable gilding of twenty seven fals aucht-merk and foure-merk peces, of the number of threfcoir fals aucht-merk and four-merk peces; quhilkis war send to him to his duelling-hous in Glesgow, be Campbell of Glenlyell, about tua yeir fyne or thairby; togidder with tua licht angell-nobillis, and that with Donald M'nair, serveand to the said Campbell of Glenlyell.

VERDICT. The Affise, be the mouth of James Hoppringill of Quhytebank, chanceler, ffand, pronunceit and declairit the said Allane Naper to be ffylit, culpable and convict of the crymes aboue writtin: and that, in respect of his awin Confessioun maid in jugement, and of his cumming in the Kingis Maiesteis will thairfoir.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be wirreit at ane staik, and his body brint in affis; and all his moveabill guidis to be escheit, &c.

Slaughter.

Jan. 4, 1603.—WILLIAME WAUCHOPE, brother to vmq^{le} Archibald Wauchope of Nydrie.¹

Dilatit of airt and pairt of the Slauchter of vmq^{le} David Edmestoun of the Wowmett, committit in the moneth of

PERSEWERIS, Aliefone Home, relict of the said vmq^{le} David, Ewfame Edmestoune, fister.

PRELOQUUTOURIS, David Home of Rowiestoune, George Home brether to the said Aliefoune.

PRELOCUTOURIS for the pannell, Mr Laurence McGill, Mr George Wauchope.

The pannell takis instrumentis, that nane compeir to infist in his persute, bot the partie. It is allegit be Williame Wauchope that this matter can nocht pass to the knowlege of ane Assyse, nor that the partie hes na entreis to persew, bot ressaunt ane Assythment.²—Ansuerit that thair is na thing producit to verifie.

THE JUSTICE repellis, in respect nathing is producet to verifie.

It is forder allegit that this matter can nocht pas to ane Assyse, in respect his Maiestie hes remittit the samyn, be his speciall Letter of grace, quhilk is producit, blank in the dait, and subscryuit be his Maiesteis allanerlie.—It is ansuerit be the persewer, that this Letter is only ane Letter, blank, finifteruslie purchest, contrair the Act of Parliament, vndaittit, vncomponit be the Thesaurer, and subscryuit only be his Maiestie; quhilk is nocht sufficient of the law.—It is

¹ See Feb. 2, 1603.

² A fine or compensation made to the relations of the party slain, as a *solatium* for the Slaughter.

declairit be the defender, that he cumis in his Maiesteis Will, baith concerning the fact and the imperfectiones of the Letter.

The parteis produceit ane Letter, subscryuit be his Maiestie, commanding the Justice to proceid and minister Justice, and put him to the knowlege of ane Assyse, for Slauchter and beiring of pistolettis.

THE JUSTICE continewis this mater to Thurisday nixt; and wairnit the Assyse, *apud acta*, to the said day.—(Jan. 6.)—‘DESERT.’

Importing and Uttering Base Coin.

Jan. 13.—ALEXANDER THOMESOUN, mariner in Borrestounes.

Dilatit, accusit and persewit for the tressonable hame-bringing of fourfcoir fax false merk-peices furth of the realme of Ingland to Scotland; and for the tressonabill out-putting of sex of them to . . . Gray, Baillie in Eyemouth; committit in the moneth of Januare instant.

VERDICT. The Assyis, be the mouth of David Home of Rowistoun, chancellor, stand, pronuncet and declaret the saidis Alexander Thomesone to be ffylet, culpable and convict.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair to be hangit vpone ane gibbet, quhill he be deid; and his guidis, geir, landis, heritageis and possessiones, gif he ony hes, to be fforfalt and escheit, &c. As also, ordanit the saidis fourfcoir fax false merk-peices, quhilkis war produceit in jugement, to be meltit and distroyit at the said croce.

Murder — Theft.

Jan. 20.—JOHNNE RAMSAY, fumtyme in Meluill mylne.

Dilatit of the crewall Murthour and Slauchter of vmq^{le} James Roise, fumtyme thesaurer and burges of Edinburghe; committit vnder filence and clud of nycht, vpone the aughtene day of September, I^m.Vj^c. and ane yeiris; and thifteous Steilling and away-taking fra the said James, of his horse, cloik and purse, at the tyme foirsaid.

VERDICT. The Assyis, be the mouth of David Fairlie merchand, chancellor, stand, pronuncet and declairit the said Johne Ramsay to be ffylet, culpable and convict of the saidis crymes.

SENTENCE. To be tane to ane gibbet, besyde the corse of Edinburghe, and thair to be hangit quhill he be deid: And thaireftir, his heid to be strukkin fra his body, and put on the Nether-boll of Edinburghe; and the remanent his memberis to be vset at his Maiesteis directioun, and his haill moveabill guidis to be escheit, &c.

Jamesucken—Rapt, Ravishing and Forcing.

June 21.—HENRIE SINCLER of Quhytkirk.

Dilaittit, accuset and persewit at the instance of Mr Tho. Hammiltoune of Monkland, aduocat to our fouerane lord, for his hienes entreis, of the crymes following, viz.

FORSAMEKILL as the said Henrie, being accompaneit with James Hepburne, serueand for the tyme to the Laird of Roisling, Andro Anderfone, and vtheris thair complices, with convocatione of our fouerane lordis leigis, to the number of aucht perfones or thairby, all bodin in feir of weir, with fwoirdis, secreitis, steil-bonettis, &c. laillie, in the moneth of December, 1^m. Vj^c. yeiris, come be way of Hamesukkin, vnder filence and clud of nicht, to vmq^{le} George Carkettillis duelling hous of the Monkirig, quhair Margaret Carkettill, now spous to Archibald Hammiltoune of Bairfute, was, in sober and quyet maner for the tyme, takand the nichtis rest; and thair brak the said hous, enterit within the samyn, and put violent handis in the said Margaret, had and raveischet hir away with thame perforce; and convoyit hir away to the place of Merkill; quhair the said James forcet and abuifet her body: And thaireftir, transpourtit hir to the place of Qubitekirk, quhair scho was detenit all the nicht captiue and priffoner, and keipit and detenit hir in captiuitie with the said Henrie and remanent perfones foirfaidis, be the space of aucht dayis thaireftir, or thairby; scho being our fouerane lordis frie leige; vsurpand thairby his hienes auctoritie vpone thame: And sua, the said Henrie was airt and pairt, red and counfall of the taking of the said Margaret, and of the Rapt and Raveisching of hir, and keiping of hir in captiuitie; scho being his hienes frie leige; and of the fforceing and abusing of hir body, to the greit contempt of our fouerane lord, his hienes auctoritie and lawis: At the leift, of Resfetting of hir, in maner foirfaid.

Comperit, Johne Home, Constable of the Castle of Edinburgh, and takis instrumentis of the entrie of the pannell.

ASSISA.

Sir Johne Ker of Spylaw,	Henrie Lauder, in Dunbar,	Adam Hepburne of Bonhard,
Stevin Bruntfield of Grynd-	Adam Scott, brother to the	James Henderfone of Drydane,
lawdene,	Laird of Dryop,	And nine others,

(Feuars and burgesses, excepting 'Mr Thomas Levingstoune, sone to the Laird of Hayning.')

The said Henrie denyit the Dittay, and ewerie poynt thairof.

The Aduocat alledgeit that the said Henrie could nocht deny the Resfett.

VERDICT. The Assyis, be the mouth of the said Adam Hepburne, chancellor, in respect na pairtie comperit to sweir the Dittay, nor that nathing wes producet be our fouerane lordis Aduocat for verifeing thairof, ffand, pronuncet and declairit the said Henrie to be Clene, innocent and acquyte of the haill poyntis of Dittay aboue specifeit. Quhairvpone the said Henrie Sincler askit instrumentis.

High Treason—Doom pronounced upon the Dead Body of a suspected Traitor, produced at the Bar of the Court.

Jan. 31.—FRANCES MOUBRAY, deceased, (son to the Laird of Barnbowgall.)

[THE Case of FRANCIS MOWBRAY may, perhaps, be considered as one of the most extraordinary of its kind, in the whole range of the Criminal Records of this or of any other country. There is something monstrous in the idea of wreaking vengeance on the lifeless remains, even of the most atro-

cious criminals; but in the present instance, the victim had only been imprisoned in the Castle of Edinburgh, on vehement suspicion of Treason; and, in his endeavour to effect an escape, he was precipitated over the rocks, and killed. The production of the mangled body of the suspected criminal, at the bar of the Supreme Criminal Tribunal of the country, and the subsequent sentence of Forfeiture, however repugnant to modern ideas and to every proper feeling, were by no means, in themselves, solitary examples of such procedure, in cases of High Treason. To avoid repetition, reference is made to a Notice prefixed to the Forfeiture of Logan of Restalrig, (see Vol. II. p. 276,) for several illustrations of a similar nature. In addition to these instances, it may be noticed, that *Robertson*, in his History of Scotland, observes, that after the battle of Corrichie, the dead body of the Earl of Huntly was presented in Parliament, before sentence of Forfeiture was pronounced against him; and other cases might easily be mentioned.

In order to arrive at the *facts* of this case of Francis Mowbray, which are of themselves of considerable historical importance, the Editor found it necessary to institute an examination of various contemporary Histories and MSS. preserved in the Advocates' Library.

The most accurate account of Mowbray's Treason, however, is detailed by *Archbishop Spotswood*, (p. 471,) in the following brief passage. 'About the same time, the King had intelligence given him, that one FRANCIS MOWBRAY, son to the Laird of Barnebowgall, who had lived a while in the Infant's Court at Bruxells, had undertaken to kill him. This brake out first at London, by an Italian, a fencer, whose name was Daniel; which coming to the Queen's ears, she commanded Sir Robert Cecill, her secretary, to call the persons (for they were both in the city) and examine them. The Italian abode by his speeches. Mowbray denied, and offered to prove him a liar, in combat; which the other accepted. Both being sent into Scotland, they were tried (examined) first severally, then confronted before certain of the Council. The Italian produced witnesses, who verified all that he had deposed: Whereupon Mowbray was committed to the Castle of Edinburgh; where, seeking to escape by night, at a window of the chamber where he was detained, the sheets proving too short, by which he thought to descend, he fell from a great precipice; and was found, the next morning, dead, at the foot of the rock. The corps was the same day, being the last of January, presented to the Justice, and Sentence of Forfeiture pronounced against him; his body hanged for a space upon the gibbet, and afterwards quartered, and affixed to the gates and most open places of the town. His friends (for he was well born, and a proper young gentleman) gave out, that he had been strangled, and his corps thrown down at the window. But this carried no appearance, and was believed of few.'¹

From the various Collections of State Papers of this period, we find, that King James was kept in constant alarm, from the incessant machinations of British as well as Foreign Papists and Jesuits; and, owing to many previous communications from the English Court, advertising the King of the certainty of such attempts being on the eve of execution, his Majesty had probably considered it necessary to make very severe examples of the first plotters who should be detected.

These Popish plots were in constant agitation, until the remarkable discovery of the Gun-Powder Treason, Nov. 5, 1605. *Calderwood* records one instance, in his MS. Church History, not mentioned by other historians, where the King certainly acted with unwonted lenity, no doubt in consequence of *Instructions* from Queen Elizabeth. It is thus briefly told. 'About the end of April (1602,) an English gentleman addressed himself to Court; and got presence of the King, upon the last of Aprile; and conferred with him a little space, in Dumfermline. Therafter, he went to his lodging. He flew

¹ Robert Birrell gives the following account of this monstrous proceeding. 'The 3d of Januar, Francis Mowbray brake ward out of the Castell; and he fell owir the wall and brake his craige. Thairefter he was traillit to the gallows and hangit; and thairefter was quarterit, and his heid and four quarteris put one the four Portis.'---*Diary*, p. 57.

James Chambers, one of the Kingis servants, and hurt the barber that was peling his head, before they were aware. He was apprehended and putt in the Tolbooth of Dumfermline. He cryed like a mad man, "The hour! The hour! The King!" &c. Being examined, he confessed that he and ane Italian fould have slaine the King. As is reported, he was transported to the Castle of Edinburgh, and kept in the irones; but within a quarter of a year was sett at liberty. It was reported that the King thought not much of the matter, but tooke the man to be some what distracted in his witts.

Without further remarks, the remaining Papers which have been collected are appended, and left for the reader's deliberate consideration.]

THE JUSTICE ordanit his Maiesteis Precept to be infert and registrat in the buikis of Adiornall.

REX,

JUSTICE, Justice clerk and your deputis, We greit 3ow weill. Forfamekill as vmq^{le} Frances Mowbray, being accuset of maist heich, horrible and detestable poyntis of Treffone and Lesmaiestie, aganis us, our persone and Estait, and for pe samyn, committit to waird within our Castell of Edinburgh; and the samyn being sufficientlie verifeit be pe Depositiones of twa or thre witneffis, and pe tryell pairof sa cleir, pat pair remanit na obscuritie of pe fame. The said vmq^{le} Francis, obduret in mynd, and to all appearance seducet be Sathan, quha was the first motioner of theis his devillische interpryses, hes, vpone intencion to escaip furth of our waird, procuret his awin miserable and schamefull death; and hes maid his giltines (be his breck of waird) mair nottour and manifest. It is our will heirfoir, that 3e cause give dome and sentence aganis him, to be demaynit, quarterit and hangit; and his heid and quarteris to be put vpoune pe maist publict pairtis and places of our burghe of Edinburgh; as ane quha is giltie of pe saidis crymes. And pat 3e direct pe officiaris (to quhome pe executioun of theis turnes belang) to do pe same, with all pe formes accustomet in sic caissis: Quhairanent pir presentis fall be 3our Warrant. Subscryuit with our hand, att Halyrudhous, pe last day of Januare, 1603.

(Sic subscribitur)

JAMES R.

MONTROIS, CAN^{RIUS}. MAR. HEREIS. HALYRUDHOUS.

S^R G. HOME, THE^R. JO. PRESTOUN. M. T. HAMMILTOUNE.

SENTENCE. According to the quhilk Precept, and for obedience thairof, the Justice, be the mouth of Walter Peirie, dempstar, decernit and ordanit the said vmq^{le} Frances Mowbray, now presentit on pannell, to be demanit as ane tratour, as eftir followis: That is to say, To be hangit be the craig vpoune ane gibbet, befyde the mercat-croce of Edinburgh, and his body to be quarterit; and his heid, ane leg and ane airme to be put vp aboue the Nether-boll, ane elne aboue the rest; and ane vther leg to be hung on the West-point of Edinburgh, and ane vther airme to be hungin vpoun the Potter-raw-point: And all his landis, heritageis, takis, steidingis, rowmes, possessiones, coirnes, cattell, guides and geir to be fioirfalt and inbrocht to our souerane lordis vse, as giltie of the saidis trefsonabill crymes. Quhilk wes pronuncet for dome.

PAPERS illustrative of MOWBRAY'S TREASON.

1. EXTRACTS from *Calderwood's MS. Church History*.

(Oct. 1602.)—IN October, the King was advertised, out of England, of a Conspiracie. Ane Italian, who had been in this countrie eight years, alledged upon FRANCIS MOWBRAY, sone to the Laird of Barnbougall, that he solicited him to take part with him in cutting of the King, by poyfone or some

other means. They were both presented before the Counsell of England. At the Kingis desyre, they were sent to Scotland. The Italian affirmed constantly,¹ before the King, and offered to fight the Single-combate with Francis. Francis, being examined, be certaine of the Kingis Counsell, denied; and offered to fight with the Italian.

(Jan. 5, 1603.)—It was ordained that FRANCIS MOWBRAY and the Italian, who accused him of Treafone, would fight, hand to hand, in the great clofe of the Abbey of Halrudhouse. The 5 of Januar was appointed for the combat. The barasse being made and preparation, advertisement was sent two or three dayes before, out of England, to stay the Combate; because there was certaine Scotish-men, who would verifie the Treafone. Soe, upon hope of further tryell, it was delayed.

(Jan. 29, 1603.)—IN the meantyme, upon the 29 of Januar, the King and Counsell were occupied, for the most part, all that day, in the examination of FRANCIS MOWBRAY and the Italian, and confronting Francis with other two Scotish men sent out of England, bot of light accompt, because they had spent their moyen, and wes forced to leave the country,—to witt, Mr Walter Mowbray and John Anderfone. The day following, that is to say, the Lord's day, the penult of Januar, Francis Mowbray assayed to come down the wall of the Castle upon peeces of the blanketts of his bed, sewed together on the night before. The blankets were too short; so he fell, and falling, feld himself upon the craig, about eight houres at night. He was apprehended immediately, but was speechlesse, and dyed about three houres in the morning.

Upon Mounday the last of Januar, his body was drawn backward to the Tolbooth, where the doome was pronounced, that he sould be drawn backward to the gibbett, and there hang for a certaine space; and then be quartered; and the members of his body to be sett up in publick pairts of the town. It is marked, that when he was examined, he said, before the King, 'If ever I thought evill, or intended evill against my Prince, God, that marketh the secreits of all hearts, make me to fall at my enemies feett; make me a spectacle to all Edinburgh; and cast my soul in Hell forever!' And, being required, subscribed these words. He fell at his enemies feet indeed! For the Italian was above him in a Chamber. He was made a spectacle to Edinburgh. As for the third, we remitt to God, who saveth and condemneth whom he pleaseth. It is reported, that he fought his supper sooner than at other tymes, as though he had some Letters to write: After supper, he rave the blanketts in four pieces, and sewed them together; and that he was minded to doe the like with the sheets. The keeper, coming to the door, and finding it close, cryed. He thrust himself, for haste, out at the window, and cometh down upon the blanketts. The blankettis being short, he falleth. Some horsemen were awaiting on, to carie him away; but finding him unable, they spoyled him and departed; and his body was brought up to the Castle. The Italian was set at liberty, and was to be rewarded.

2. EXTRACT from an Anonymous MS. History of Scotland.²

(Jan. 30, 1603.)—FRANCIS MOWBRAY, being warditt for allegit Treffoune aganis (his) Majesty, brak waird; and being aschaipitt³ be the watche of the Castell, thay schaikis him out of the claithis quhilke he wes gangand doune into; quhairby he fallis, and slayis him self be the fame.

3. EXTRACTS from Cecil's Secret Correspondence with King James.

(i.) MOWBRAY, to Daniel and others, did confesse a purpose, in his own heart, to be made an instrument against the person of the King, whensoever he were set in hand; and to affect all persons opposite to the present carriage of your affairs, as he would demonstrate upon the first opportunity. If other *embryones*, which are yet *informes*, but yet dangerous, come any nearer to the likelihood of any formal shape, his Majesty shall be advertised; though, in the mean, we repute it a great indiscretion to reveal our uttermost, before the desire of utterance, out of a sound affection, becomes so strong as

¹ With constancy, without prevarication.

² Advocates' Library, A. 4. 35.

³ Escaped. Perhaps for espied.

the son of Cræfus would, by straining, break the strings of his tied tongue, to deliver what his love and duty binds him to.¹

(ii.) CECIL and I are very glad that the Laird of Weemes² had no better warrant for his traffick with this busy body.³ The man is not honest, nor was drawn to this discovery of *Mowbray's Treason* by love to the King, but merely upon spleen and malice to the party, upon the fractions of old amity. In this point we will say no more, but only wish, for the good of the King's service, that he neither have encouragement to come, nor entertainment, though he should chance to come; which I do not think will happen, because Cecil's angels⁴ have him in charge, for the working out of more stuff, if it be possible; and his pension seasons him in the giddiness of his natural and habitual uncertainties.

From Francis Mowbray, Cecil did never hear word, since the last which was advertised; which makes him wonder, both at the pause, and at the motive that may cause it, after so large promises. Cecil will observe the King's direction, as well in mining, by invention and subornation, into his ends, as by continuing the pension, though he have very ill deserved it. He doth concur with the judgement of King James, touching the peril that may grow by driving him into despair, for want of provender, before the close decks be discovered. You may, in like sort, assure King James, that Cecil will take no extraordinary course with him, about King James's particular, till he take him with more meat in his mouth, and the matter be so pregnant as negatives would be found both ridiculous and impudent.⁵

Bearing, Wearing, and Shooting Hagbuts and Pistolets, &c.

Feb. 1.—SIR HARIE LYNDSEY of Carrestoun.

Perfewit be Mr Thomas Hammiltoun of Drumcaine, aduocat, of the DITTAY following, producet be the said prisoner.

SIR HARIE LYNDSEY of Carrestoun, Ye ar indytit and accuset, fforamekill as it is statute and ordanit be dyuerse our souerane lordis Actis of Parliament, that na maner of persone or persones tak vpon hand to beir or weir hagbuttis or pistolettis, or ony vther ingyne of ffyre-wark vpon thair persones, and in thair compans, oppinlie, outwith houffis, or schute thairwith at ony persone or persones, vnder the pane of cutting af of thair rycht hand, and vtheris panis thairin contenit: Nochtwithstanding quhair of, it is of veritie, that ye, being forgetfull of your deitfull obedience and reverence, quhilk ye sould haif gevin to the saidis Actis and lawis, and of the guid exampill quhilk ye sould haif gevin to vtheris his Maiesteis leigis, in respect of your place, office and seruice in his Maiesteis houshold; ye, laitlie, vpon the . . . day of Januare lastbypast, with convocatioun of our souerane lordis leigis, to the number of ten or tuelf persones, all bodin in feir of weir, with secreitis, steil-bonetis, hagbutis and pistolettis, past fra the Palice of Halayrudhous towardis Perth, quhair ye was informet Patrik Eviot, brother to Colene Eviot of Balhouffie,⁶ was in the South-Inche thair of for the tyme; and thair set vpon him, and crewallie inuaidit him for his flauchter, and chaiffit him to ane cok-boit, quhilk he wes compellit to tak, and enter in the watter of Tay, for saistie of his lyfe: And he being thairin, ye and your company schot and dilaschet the number of ten or tuelf schott of hagbuttis and pistolettis at him,

¹ Lord Henry Howard to Mr Edward Bruce; without date, but about Aug. 1802. See Vol. II. p. 319, Note.

² See Vol. II. p. 276, Note. ³ The Master of Gray. ⁴ Golden angels, bribery. ⁵ Lord Henry Howard to Mr Edward Bruce—probably written soon after that of the 27th August, 1602.—*Heiles*. ⁶ Although Eviot escaped this barbarous attack, he was murdered, five years afterwards, by his wife and her paramour. *Fleming* gives the following graphic account of this transaction, in his curious MS. Chronicle, preserved in the Library of the Faculty of Advocates. (8th Apr. 1608,) 'PATRIK EVIOT, brother-german to the Laird of Balhouffie, wes murtherit in Blelok, be his wyfe Jonet Ross, quha wes air to the Lairdschip of Craigie and Kynfawnes both (also.) He wes schote with ane gun in his bed, sleiping, be James McNair. Thairefter, they wer both taikin and execute; and brunt, efter they wer hangit, in the Playfeild of Perth, the 17 May 1608. His heid and arme putt wp on the Castell gawill port.'

of purpois to haif flane him ; quhilk ye had nocht failzit to haif done, war nocht he lay darnet¹ on his face, in the boddome of the said boit. Be beiring, weiring and schuitting of the quhilkis hagbuttis and pistolettis, ye haif contravenit the tennour of the saidis Actis of Parliament, and incurrit the panis contentit thairin ; quhilk fould be execute aganis yow with all rigour, in exampill of vtheris, &c.

The said Sir Harie Lyndsay declairit, for obedience of the Kingis Maiestie, and for the offence done to his hienes, mynding nawyis to vse any defenssis be law, albeit he mycht vse thame ; he will becum in his Maiesteis Will for the Dittay producet be the Aduocat : Protesting, that his becuming in will preiudge him nocht, anent ony defens that he will vse aganis ony pairtie that fall happin to perfew him, heirefter, for the saidis crymes : Quhairvpoun he askit instrumentis ; and lykwayis our fouerane lordis aduocat askit instrumentis of his becuming in his Maiesteis will.

The samyn day, Patrik Eviot protestit, that the said Sir Harie Lyndsayis becuming in will fould nocht preiudge him of ony actioun that he had to perfew aganis him.

Slaughter — Sentence of Banishment.

Feb. 2.—WILLIAME WAUCHOPE, sone to v^mq^{le} Robert Wauchope of Nydrie.²

Compeirit Johne Mayne, and producet ane Precept contening HIS HIENES WILL, togidder with ane delyuerance of the Lordis of Secreit Counfall, quhilk the Justice ordanit to be infert and registrat in the buikis of Adiornall ; quhair of the tennour followis.

REX,

JUSTICE, Justice Clerk and 3our deputis, We greit 3ow weill. Forfamekill as Williame Wauchope, sone lauchfull to v^mq^{le} Robert Wauchope of Nydrie, being laitlie perfewit befor 3ow, to haif vnderlyne our law, for airt and pairt of pe slauchter of v^mq^{le} Dauid Edmestoune of Wowmett : ffor pe quhilk slauchter he is becum in our will, in hoip of our clemencie and fauour : We pairfoir, for dyuerse confiderationes moveing ws, temperand the rigour of justice with clemencie, haif declairit and declairis our will towardis him, as followis : That is to say, That the said Williame fall depairt furth of our realme to quhatfumeuir pairtis he pleiffis, betuix pe dait heirof and pe first day of Marche nixto-cum ; and nawayis to retorne agane within pe samyn, without our Licence first had and obtenit pairto : And for pat effect, to find sufficient cautionne actit in pe buikis of Adiornall, vnder the pane of fyve hundreth pundis, to be payit to our Tbesaurer in our name, in cais of failzie. And forder, in cais it fall happin pe said Williame to retorne agane within our realme, eftir his departour, without our licence, as said is, that, in pat caice, he fall die pe deathe pairfoir, quhairneir he can be apprehendit, be ony of our Justices or ministeris of our lawis : And pat pir presentis falbe ane sufficient Warrant and Commissiounne to pat effect. Subscryuit with our hand, att Halyrudhous, pe secund day of Februaire, 1603.

(Sic subscribitur)

JAMES R.

Followis the (Supplication and Warrant.

VNTO 3our Maiestie and Lordis of Secreit Counsell, humlie menis and schawis 3our seruitour, Williame Wauchope, sone to the Laird of Nydrie : That quhair, eftir I haif remanit this lang tyme in waird, within the Tolbuithe of Edinburgh, and haif cum in 3our hienes will and pleasour, foir airt and pairt of the slauchter of v^mq^{le} Dauid Edmestoun of Wowmet, it hes plefit 3our Maiestie, of 3our

¹ Hid, concealed.

² See Jan. 4, 1603.

hienes fauour and mercie, to grant ane Warrant for puting of me to libertie furth of the said waird, I findand cautionne actit in your graces buikis for my depairting furth of the cuntrie betuix and the first day of Marche nixtocum, vnder the pane of fyve hundreth pundis, and onnawayis to retorne agane within the samyn, without your hienes Licence, vnder the pane of deid. As pe said Warrant heir present to schaw beris. Out of the quhilk waird I am nocht as zit releuit, albeit I haif done quhat in me lyis to find caution and fouirtie, conforme to pe said Warrant, and hes offerit Johne Robiesoun, flescheour, burges of Edinburgh, cautioner for me to pat effect; and it nawayis lying in my power, as I fall answere to God, to get ony vper persone to becum caution for me, bot sic persones as ar nocht resposnall in landis and guidis, as the said Johne is, quhair of your Maiestie and lordis as zit haif had a fauourable consideration of me and my estait in tyme bygane; sua I maist humlie beseik your lordschipis, that ze will freith and releue me furth of the said waird; and that I may haif command to your Maiesteis Clerk of Counfall or Justice Clerk, to ressaue pe said Johne Robiesoun caution for me: Conforme to the said Warrant and your answer.

(Sic deliberatur) APUD Halyrudhous, primo Februarij, anno tertio Im.Vjc. Fiat ut petitur, Johne Robiesoun and John Mayne, coniunctlie and feuerallie, cautioneris.

(Sic subscribitur)

MONTROIS, CANRIUS. M. R. YOUNG.

Conforme to the quhilk Precept and Will producet, the Justice, be the mouth of James Lowrie, dempstar, pronuncet his Maiesteis will to be, &c.¹

House-breaking — Theft, &c.

Feb. 15.—ANDRO REID in Bervie.

Dilatit for cuming to George Sincleris house, accompaneit with Johne Bennet and Thomas Welsch; breking of the said George house, streking vp of kiftis, and taking furth thair of certane abuilzementis,² clothing, and gold and filuer, pertening to Dame Agnes Sincler Lady Errole, Barbara Sincler and Thomas Sym, messinger, hir seruandis.

PERSEWARIS.

Barbara Sincler, Thomas Sym, messinger.

PRELOQUUTOIRIS for the pannell.

Mr Vmpra Blindschell, Mr George Frazer.

Compeirit the Lady Errole, and infistit in the persute of Andro Reid, according to the Dittay; and producet ane Rolment of Court.—Mr Vmpra Blindschell, for the pannell, allegit, that he can nocht be put to the knowlege of ane Affyse for the haill Dittay, except the plaittis; in respect he was put to the knowlege of ane Affyse for the samyn, befor the Scheref of Kyncairne; and the Judge hes fund him nawayis worthie of daith thairfoir, as the proces producet beiris. The pannell askit instrumentis of the production of the Rolment of Court furth of the perseweris handis, quhair Andro Reid is put to the knowlege of ane Affyse be our fouerane lordis Commiffiounne, of the poyntis of Dittay producet, and of the Judges decreit.—It wes answerit be the perseweris, to the former allegiance, that he sould be put to the knowlege of ane Affyse for the said crimes, becaus he was nather ffylit nor clangit be the Affyse thairfoir: And for

¹ In terms of the Warrant, which is repeated.

² Apparel, dress. Fr. *habiliment*.

the verificatioun thair of, producet the proces subfcriuit be Neilsoun, clerk thairto : And thairfoir the said allegiance aucht to be repellit.

The Judge continewis Interlocutor to the morne.

Feb. 16.—The Justice continewis this mater to the morne.

Comperit the haill personis of Affyse, and declairit that thai haif onwaittit this tua dayis vpon thair call, and ar superexpendit ; and protestit that thai be nocht vnlawit heirefter, in cais of thair non-compeirance.—Continued to 17th, and afterwards to 18th.

PERSEWAR,¹ Mr Thomas Hammiltoun.

PRELOCUTOR for the pannell, Mr Johne Scharp.

Feb. 18.—The Aduocat askit instrumentis of the productione of the Rolment of Court, producet be the pannell, subfcriuit be Mr Johne Foulertoun, and protestis (that) the samyn remane in proces ; and adheris to the alledgeances, that he is ffylit of the cryme, be his awin Confessioun, be ane Affyse alreddie ; and desyres only that dome may be pronuncet aganis him, conforme to the lawis ; and that in respect of the Rolment producet ; and consentis he pass to na Affyse.—It is answerit be the pannell, that na dome aucht of new to be gevin, becaus thair is a judgement alreddie gevin be the Judge, conforme to the Rolment of Court ; and that in respect of the Act of Parliament, quhair it is provydit, that a man anis being clanget, can nocht be of new persewit for that cryme —The Justice continewis this mater to Wednisday nixt.

Jun. 10.—SENTENCE. The quhilk day, Andro Reid in Bervie, being enterit on pannell, as he that was convict be ane Affyse, in ane Justice-Court halding in Stanehyve, the xv day of September, the yeir of God I^m. sex hundreth and tua yeiris, be Johne Keyth in Coltoun, Sheref-deput of the scherefdom of Kincardin, and Capitan Andro Stewart Judge, be vertew of our souerane lordis Commissioun, direct to my Lord Shereff of Kincardin, for cuming to George Sincleris house, &c. ; quhairvpon na dome wes pronuncet : For the quhilk cause the Justice-depute decernit and ordanit the said Andro Reid to pass furth of this realme, betuix the day and dait heirof, and the tent day of August nixtocum ; and never to returne within the samyn ; bot to remane Baneischit during all the dayis of his lyfe, vnder the pane of deid : And all his moveabill guidis to be escheit and inbrocht to our souerane lordis vse, as convict of the said crymes ; quhilk was pronuncet for dome.

Compeirit Capitane Andro Stewart, and protestit, that the sentence and dome of Baneischment pronuncet aganis the said Andro Reid in Innerbervie, be na wayis prejudiciall to the actioun of Errour, to be intentit aganis the Affyse, for Clangeing of the said Andro Reid of the crymes confest be him.

¹ In addition to those formerly entered.
10, 1603.

² No farther proceedings are entered, until June

Slaughter.

Feb. 24.—DONALD M'ANGUS of Glengarie, John Dou M'keane V'donill voir, Donald M'keane V'donill voir, Angus M'keane V'donill voir, his brether; Findlay M'donill V'donill voir, Alexander M'donill V'donill voir, John M'donill V'donill voir, thair brether; Rorie M'murchie V'donill oge, Donald M'murchie V'quhonchie, Tormot M'murchie V'keane, Johne Moir M'murchie Vic doull oige, Johne Dou M'keane V'doull oige, Inving M'indowy, in Glengarie, and Eweyne Ockerdane Carfar.

Compeirit Williame Makiesoun, and producit our fouerane lordis letteris, deulie execute and indorfate, purchest be Angus M'indowie, as brother to Donald M'keane V'doun, Johne and Dougall M'murdo Boweis, as nerrest of kyn to vmq^{le} Donald M'donald M'volddonich; Johne M'donald V'Jok, as brother to Donald M'donald V'Jok, with the kyn and freindis of the faidis vmq^{le} perfones; aganis Donald M'angus of Glengarie, &c.; be the quhilkis Letteris thay ar denuncett rebellis and putt to the horne, in default of finding of fouertie to haif compeirit this day and place, to haif vnderlyne the law for the Slauchter of the faidis vmq^{le} perfones: Quhairvpone he askit instrumentis; and protestit for relief of Rorie M'kenzie of Cultellan, cautioner.

Slaughter.

Mar. 3.—JAMES STEWART, sone to vmq^{le} James Stewart, Maister of Buchan.¹

Sir James Scrymgeour of Dudop, kny^t, oft tymes callit, as cautioner and fouertie for James Stewart, sone to vmq^{le} James S. M' of Buchan, to haif enterit and presentit him to haif vnderlyne the law, for airt and pairt of the felloun and crewall Slauchter of vmq^{le} Patrik Brysone, tailzeour, burges of the Cannogait; committit in the moneth of October lastbypast, vpone set purpois, &c.: The Justice unlawit Sir James Scrymgeour in the pane of tua hundreth merkis, and als adjudget the said James Stewart to be denuncet, &c., and his moveabill guidis to be escheit, &c.

Murder — Stouthrief, &c.

Apr. 28.—ALLASTER M'KIE, Gilchrist Kittoche alias Makilmoyle,
 M'ynroyer, Fyndlaw Dow M'olean.

Dilatit of certane poyntis of Thift, and for cuming to the Laird of Luiffis

¹ ' Patrik Brysone flaine in the Cannogate be ane James Stewart of Buquhane; quha wes apprehendit and wardit in Sir James Ballendine's hous; quhair he remanit still, till the 26 of November, on the quhilk day he brake ward out of Sir James Innes hous.'—*Birrel's Diary*, p. 56.

boundis, in companie with the Laird of M^cGregour, and airt and pairt of the Murthour and Reif committit thairon in Februar last.

DITTAYS against the Pannels.

ALLASTER M^cKIE, ffor airt and pairt of the thiftious Steilling, conceilling and away-taking of foure 3owis, pertening to James Galbraithe in Bolgair, furth of Barroun M^cewins corrie or glen ; committit about Michaelmas last. ITEM, for steilling fra the said James of tuelf scheip furth of the said glen. ITEM, for the thiftious steilling of tua lambes in Balglafs, pertening to the Lady Keir. ITEM, for the steilling of tua meirs furth of the landis of Galgerrachene ; committit about Midfomer last. ITEM, for the thiftious steilling of thre meiris or fillies furth of Campsie-mure. ITEM, for commoun thift, &c.—GILCHREIST KITTOCHE, &c., ffor being in company with the Laird of MakGregour and his complices, and airt and pairt with him of the crewall Muirthour and slauchter of dyuerie the Laird of Lufes freindis, seruandis and pairtakeris, to the number of fevin scoir perfonas ; committit within the Laird of Lufe boundis, in the moneth of Februar last : And for the harieing and spuilzeing and reveing of the haill cuntrey thairabout ; and thifteous steilling and away-taking with thame, of the number of aucht hundreth ky, horfe, nolt, scheip and vther bestiall ; committit be thame at the tyme foirsaid.

Quhairof the saidis perfonas war airt and pairt, accoirding as thair Depositiones and Confessiones beiris.

VERDICT. The Assyse ffand, pronuncet and declairit the pannell to be ffylet, culpabill and convict of the haill crymes respectiue aboue specifedit.

SENTENCE. The Justice, be the mouth of James Henderfone, dempster of Court, ordanit thame, and ilk ane of thame, to be tane to the Burrowmure of Ed^r, and to be hangit vpone the Galloise thairof quhill thay be deid ; and all thair moveabill guidis to be escheit, &c.

Intercommuning with the Clan-Gregor.

May 17.—AULAY M^cCAULAY of Ardincapill.

Compeirit Johnne Dunlop, seruitour to my Lord Duik of Lennox, and producet ane Warrant, subscriuit be his Maiestie ; quhairof the tennour followis.

REX,

JUSTICE GENERALL, 3our depute, Justice clerk, Aduocatt and 3our deputtis, We greitt 3ow hairtie weill : fforfamekill as our louit Aulay M^ccaulay of Ardincapill is summond at pe instance of 3ow our said Aduocat, to compeir on the xvij day of Maij nixtocum, to vnderly the law for the allegit intercommuning with *Allaster M^cgregour of Glenstra*, and vmq^{le} *Johnne Dow M^cgregour* his broper, our rebellis, and for certane vperis crymes and poyntts of Dittay, specifedit and contenit in pe summondis raisit pairanent. And We, vnderstanding that the said Aulay M^ccaulay is altogidder frie and innocent of pe saidis allegit crymes laid to his charge ; and that he is to accompany ws to our realme of Ingland, with our darrest coufing the Duik of Lennox, his maister : Thairfoir, and for certane vperis guid cauffis and confiderationes moveing ws, it is our Will, and We command 3ow, to desist and ceise fra all calling or accuseing of the said Aulay M^ccaulay, the day foirsaid ; or ony wayes proceeding aganis him or his cautioner in the matter foirsaid ; bot suffer the dyett, appoyntit to that effect, to desert in it self, as gif ony sic Letteris had nevir bene raisit ; naper 3it trubill nor molest pe said Aulay M^ccaulay, for the pretendit cause foirsaid,¹ at ony vper dyet paireftir, quhill the returning of our said

¹ See Note to the Laird of MacGregor's Declaration, Jan. 20, 1604.

derrest couing furth of our realme of Ingland. As 3e will anſaer to us vpone 3our obedience; and pat nochtwithſtanding of ony vper Warrant gevin or to be gevin in the contrair: Quhairanent pir preſentis fall be to 3ow ſufficient Warrant. Subſcryuit with our hand, att Beruik, pe ſevint day of Apryle 1603. (Sic ſubſcribitur) JAMES R.

The quhilk Warrant the Juſtice admittit, and deſertit the ſaid dyet.

Adultery — Child-Murder.

May 18.—JOHNE RYBURNE of that Ilk.

Robert Montgomerie of Heſſilheid produceit our ſouerane lordis letteris, purcheft at the inſtance of Mr Thomas Hammiltoune, aduocat to our ſouerane lord, aganes Johne Ryburne of that Ilk, for Adulterie and the Murthour of ane infant bairne, gottin vpoun Agnes Dunlop: Be the quhilk Letteris the ſaid Ryburne of that Ilk is put to the Horne.

Murder of Seven Score Persons in the Lennox by the Clan-Gregor, &c.

May 20.—GILLESPIE M'DONALD M'INNES DOW, Donald M'clerich alias Stewart, and Johne M'coneill M'condochie.

Dilatit, accuſit and perſewit for being in company with the Laird of M'gregour: AND for airt and pairt of the lait grit flauchter and crewall Murthour of ſevin ſcoir perſones in the Lennox,¹ all freindis and ſervandis to the Laird of Luſe: AND of the thiftious Steilling and Reiffing of aucht hundreth oxin, ky² and vther beſtiall, and herrieing the haill cuntrie; committit in the moneth of Februlare laſtbypaſt: ITEM, for the thiftious Steilling of tua horſe and ane meir furth of Strabrand, fra Johne Stewart Neilſoun and his man; committit at Lambes³ laſt: AND for commoun Soirning,⁴ &c.—*Donald M'clerich* dilatit and perſewit for airt and pairt of the thiftious Steilling of nine ky and oxin, tua yeir ſyne or thairby, fra Patrik Stewart furth of Innervaik, in Athoill; and for commoun Thift and commoun Soirning, &c.

VERDICT. The Aſſyſe, be the mouth of Johnne Douglas, burges (of Edinburgh), chancellor, ſtand, pronunceit and declairit the ſaidis thre perſones to be culpabill and convict of the ſoirſaidis crymes.

SENTENCE. To be tane to the Caſtel-hill of Edinburgh, and to be hangit thair on ane gibbett, quhill thay be deid, &c.

¹ See Apr. 28, Jul. 5 and 14, 1603, &c. 'The 9 of Februarii, the Laird of Macgregor, with four hunder of hes name and factioun, enterit in the Lennox; quhair he maid Spulzie and flauchter to the number of ſixty honest men, beſyde wemen and bairnis. He ſpared nane quhair he came.'—*Birrel's Diary*, p. 58. ² Kine, cattle. ³ Lammas-day, 1st August. ⁴ Taking free quarters by force, (q. d. *sejournant*?)

**Inbasion of a Minister, near the Tolbooth, where the Privy
Council were Sitting in Judgement.**

Jun. 29.—WALTER GRAHAME, seruitour to Mr Robert Williamfoun, wryter.

Dilatit, accusit and persewit be DITTAY of the crymes following, viz.

FORSAMEKILL as it is statute and ordanit, be our sowerane lordis Actis of Parliament, speciallie be ane Act maid in his Maiesteis ellevint Parliament, cap. 27, that quhatsumevir persone or persones Invaidis ony Minister,¹ or putis ony violent handis in him for ony forget² querrell, fall be pwneist thairfoir with all rigour, and incur the payne of tynfall of all thair moveabill guidis for the said invasioun and violence allanerlie, albeit na slauchter nor mutilatioun follow thairvpoun; the ane half of the saidis guidis to be applyit to our sowerane lordis vse, and the vther to the pairtie invaidit or offendit, but preiudice of the gritter pwneischment, gif ony heicher cryme concur with the violence and invasioun foirfaid: And als, Proclamatioun was maid, in our sowerane lordis name and auctoritie, vpone the . . . day of Junij instant, in the yeir of God, J^m. Vj^e. and thre, befor the Trinitie ffair, that na persone sould invaid or persew ane vther within this burch, during the tyme of the ffair, vnder the pane of deid: And forder, it is provydit be dyuerse Actis of Secreit Counfall, that na persone fall invaid ony man, be drawing of ane sword, within ane myle to the Kingis Palice, or to his hienes Counfall, vnder the pane of deid. AND trew it is, that the said Walter, in hie and manifest contempt of our sowerane lordis Actis of Parliament and Proclamationes foirfaidis, vpone deidlie malice consauet be him aganis Mr Thomas Douglas of Stannypeth, Minister at Balmirrieno, and haifing forget a quarrell aganis him, for the revenge of certane injurious speiches, allegit gevin be the said Mr Thomas Douglas to the said Mr Robert Williamfoun, his maister, vpoun the xxj day of Junij instant, he, vpone the xxij day of the said moneth of Junij, preparit to him selff ane grit foure-nuikit³ battoun, of aik, of purpois to haif fellit the said Mr Thomas Douglas thair: Lyk as the said Walter set vpone him, behind his bak, vpone the hie streit of the burch of Edinburghe, in the tyme of the said ffair, a lytill beneth the Stinkand-style,⁴ the Lordis of Secreit Counfall being within the said burch, and haifing sittin at Counfall in the Tolbuth of the said burch, nocht passand ane half hour befor the violence and invasioun following; and thair, maist schamesfullie, barbaruslie and crewallie, without regaird of the person of ane Minister, and haifing never spokin with him ane word of befor, invaidit him for his slauchter with the said batoun, strak him thairwith tua straikis vpone the heid, behind the richt lug,⁵ and hurt and woundit him thairwith, to the effusion of his bluid in grit quantitie; vpone set purpois, persuaifioun,⁶ precogitat malice and foirthocht felony. And efter the committing of the said crewall and schamesfull Invasioun, and hurting of him, as said is, the said Walter fled and gat away; and thaireftir was tane and apprehendit for the said barbarus crewaltie; and he hes confessit the samyn. Quhilk batouning of the said Mr Thomas, fa neir to his hienes Counfall, mereittis gritter pwneischment, nor gif⁷ he had drawin ane sword to the effect aboue specifeit, in respect of the vyle indignitie thair of: Quhairby he hes contravenit the tennour of the saidis Actis of Parliament and Proclamatioun foirfaid, and incurrit the payne of daith, quhilk aucht and sould be execute aganis him with all rigour, iu exampill of vtheris, &c.

PERSEWAR.

Mr Johne Nicolfoun of Lefwaid, Aduocat, substitute to Mr Thomas Hammiltoun of Drumcairne.

VERDICT. The Assyse, be the mouth of James Lyndesay of Dowhill, chancellor, ffand, pronuncet and declairit the said Walter Grahame to be ffylit, culpable (and) convict of the saidis crymes.

¹ Clergyman. ² Forged, feigned, simulate. ³ Four-cornered, square. ⁴ Near the Tolbooth, and almost opposite the door of Haddo's-hold, to the eastward of the late New North, or 'Little Kirk.'

⁵ Ear.

⁶ In common style, this word is usually 'provision.'

⁷ Than if.

(Aug. 12.)—Mr Williame Borthuik, Justice-depute,¹ (pronounced Sentence against the pannel,) be vertew, and at command of ane Warrant of the Lordis of his hienes Secreit Counfall, quhairof the tennour followis :

APUD EDINBURGHE, vltimo Junij 1603. The Lordis of Secreit Counfall Ordanis pe Justice and his deputis to pronunce dome vpone Walter Grahame, for pe streking of Mr Thomas Douglas, Minister, with ane batoun ; in maner following, viz. : That pe said Walter fall be scurgit fra pe Castell hill to the Neper boll, throw pis bur^t, and his richt hand to be strukin af at pe Neper boll : And pairefter, Ordanis him to be Banischet his Maiesteis haill dominiones, and onnawyis to returne agane within pe samyn during his lyf tyme, vnder pe pane of deid. And that he remove furth of pe saidis realmes betuix and pe last day of September nixtocum, vnder pe pane foirfaid.

(Sic subscribitur) MONTROIS CANRIUS. AL. VCHILTRIE. ELPHINGSTOUN. A. FYVIE. NEUBOTLE. J. COKBURNE. R. COKBURNE. JO. PRESTOUN. CRANSTOUNRIDDELL. QUHITTINGHAME.

SENTENCE. The Justice, be the mouthe of Walter Peirie, dempster of Court, decernit and ordanit the said Walter Grahame to be scurgit throw the bur^t of Ed^r,² &c., within tua moneth nixt following, vnder the pane foirfaid : Quhilk was gevin for dome.

Slaughter.

Jun. 30.—JOSEPH BONCLE, burges of Dumbar.

Dilatit and accusit for the Slauchter of vmq^{le} James Loch, induellar in Dumbar, committit vpoun the xxviij day of Junij instant, be the straik of ane sword in the lisk³ and the wambe.⁴

Compeirit Williame Kellie, Thesaurer of Dumbar, in name of the Proveist and bailleis thairof, and producet the letter vnderwritten ; quhairof the tennour followis.

PROVEIST and bailleis of the bur^t of Dumbar. It is our will, and for findrie guid respectis and confiderationes moveing ws, We command 3ow, that 3e caus faillie convoy, bring and present Josephe Bonkle befor our fouerane lordis Justice and his deputies, within pis bur^t of Edin^r, to vnderly the law and justice for pe slauchter of vmq^{le} James Loch, smyth, committit be him vpoun pe xxviij of Junij instant. Quhairanent pir presentis salbe 3our Warrant : And but⁵ preiudice or ony derogation to quhatsumeuir 3our liberteis and privilegis of Scherefschip, disponit and grantit be his Maiestie in 3our fauoris, and contenit in 3our new Infeftment, maid pairvpoun. Subscriuit with our handis, at Edinburghe, pe xxix day of Junij, 1603.

(Sic subscribitur) MONTROIS, CANRIUS. J. ELPHINGSTOUN. A. FYVIE. A. VCHILTRIE. QUHITTINGHAM. JO. PRESTOUNE. EDZELL. CRANSTOUNRIDDELL. R. COKBURNE. J. COKBURNE.

VERDICT. The Assyse, be the mouth of Patrik Nisbet in Dumbar, chancillar, ffand, pronunceit and declarit the said Josephe to be ffylit, culpable and convict of the Slauchter of the said vmq^{le} James Loch.

SENTENCE. To be tane to ane place besyde the mercat croce of Edinburghe,

¹ On Aug. 12, 1603.
groin or flank.

⁴ Belly.

² In terms of the above Warrant of the Privy Council.
⁵ Without.

³ The

and thair his heid to be strikin fra his body ; and all his movabill guidis to be escheit, &c.

Treason — Forging and Uttering base Money.

ROBERT DOW *alias* MEINZEIS and Allester M^cclaren, smyth.

Dilatit ffor airt, pairt, red and counsale, and conceilling of the treffonabill fforgeing, counterfitting and outputting of fals and adulterat coinzie, sic as fyve-pound-pecis and foure-merk-pecis, quhilkis Arthour Smyth coinzeit fyve zeir fyne or thairby, in his smiddie besyde Banff: And for outing¹ of ane pairt thairof, amangis our fouerane lordis liegis.

VERDICT. The Assyis, be the mouth of Williame Stalker elder, Goldsmyth, ffind them to be ffylit, culpabill and convict of the treffonabill conceling of the fforgeing, prenting and counterfitting of fals coinzie, prentit and forgeit be the said Arthour Smyth, in his smiddie besyde Banff, conforme to thair Depositionis.

SENTENCE. The said Allester M^cclaren to be tane to the gallow on the Borrowmure, and thairvpoun to be hangit quhill he be deid : And all his landis, heretageis, takis, ftedingis, rowmis and possessionis, guidis and geir, coirnis, cattell, infycht pleneiffing to be forfaltit and escheit, &c.

Continewis dome vpone Robert Dow to the morrow quhill he auise with the Counfall.²

Slaughter of the Laird of Russ's People by the Clan-Gregor, &c.

Jul. 5.—GILLIEMICHELL M^cHISCHOK, feruand to vmq^{le} Johne Dow M^cgregour, and Nicoll M^cpharie Roy M^cgregour.

Dilatit for being [‘at the ffield of the Lennox³ aganis Sir Vmphray Colquhoun: And for airt and pairt of the Slauchter of sewin scoir persounes,’⁴] in cumpany with the Laird of M^cgregour and his complices, at the ffeild of the Lennox, aganis Alexander Colquhoun of Lufe: And for airt and pairt of the slauchter of the said Laird of Lufe freindis, servandis, affisteris and pairtakeris, to the number of sevin scoir persones or thairby: And for reifing and herreing of the haille cuntrey, and fteilling and away-taking of ky, oxin, horse, fcheip, gaittis and vther bestiall, to the number of aucht hundreth bestiall or thairby; committit in the moneth of Februlare lastbypast.

VERDICT. The Assyse, be the mouth of Robert Oifteane in Edinburghe, chancellor, all in ane voice, but⁵ variance, ffind, pronuncet and declarit the saidis

¹ Uttering, putting out.

² On Jul. 5, he is ordained ‘to be tane to the Castellhill of Edinburghe, and thair to be hangit quhill he be dead; and all his moveabill guidis to be escheit, and his lands and heritageis, gif he ony has, to be forfaltit,’ &c.

³ See Notice prefixed to the Trial of Allaster M^cGregour of Glenstrae, Jan. 20, 1604.

⁴ This sentence occurs at the first entry. See also Apr. 28 and May 17, &c.

⁵ Without.

Gillie-Mitchell M^cifchok, alias M^cgilliechallum, and Nicoll M^cfarie Roy M^cgregour to be ffylit, culpable and convict of airt and pairt of the crymes foirfaidis.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be hangit on ane gibbet quhill thay be deid ; and thair guidis to be efcheit, &c.

‘ Field of the Lennox ’ — Slaughter of the Colquhouns, &c.

Jul. 14.—JOHNE (DOW M^cANEVALICH) M^cGREGOUR, at the Kirk of Comerie.

Dilaitit for being in cumpanie with Allaster M^cgregour of Glenstra¹ and his complices, at the ffeild of the Lennox, againis the Laird of Lufe and his freindis : And airt and pairt of the Slauchteris, thiftis, robbereis committit be thame ; quhairin thair was flane vij fcoir perfonis ; committit the aucht day of Februare laft.

VERDICT. The Affyse, be the mouth of James Chalmer, burges of Edinburghe, chancellor, ffand the faid Johne Dow M^canevalich M^cgregour to be ffylit, culpable and convict of the faidis crymes.

SENTENCE. To be tane to the Castel-hill of Edinburghe, and thair his heid to be strikin from his body ; and all his movabill guidis to be efcheit, &c.

**Slaughter — Unmerciful Oppression — Shooting ‘ Hagbuttis,’ &c.
Cattle and Sheep Stealing, &c.**

Jul. 19.—GEORGE TRUMBILL, of Belfis.

Dilatit, accusit and perfewit of the crymes *respectiue* following, viz.

FOR airt and pairt of the Slauchter of vmq^{le} Johne Hammiltoun, callit of Cumnock ; committit the xxij day of Januare, I^m.V^c. threscoir nyntene yeris. ITEM, of airt and pairt of the Slauchter of vmq^{le} Williame Trumbill, sone lauchfull to vmq^{le} Walter Trumbill of Raflat ; committit in the moneth of Apryle, I^m.Vj^e. yeris. ITEM, for Vfurpation of our fouerane lordis authoritie, in taking of Adame Trumbill, sumtyme fervand to the faid vmq^{le} Walter Trumbill of Raflat, he being his hienes frie subiect, and binding him with fetteris, and hinging him be the feit and schouderis, ouer ane balk, for the space of xij dayis, quhairthrow his feit rottit fra him ; without Commissioun gevin him to that effect. ITEM, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbutis, dagis and pistolettis ; and in schuiting of Walter Trumbill, younger of Raflat, betuix the toun of Jedburgh and the place of Belfis, in the airme and thie ; committit in anno I^m.Vj^e. and tua yeris. ITEM, for the thiftious Steilling of four nolt fra Johnne Donaldsoun, in Melrois ; committit thre yeir syne or thairby. ITEM, for airt and pairt of the thiftious Steilling of fax ky and oxin, xx fcheip, tua horfis, with the infycht pleneiffing and eidentis pertening to David Riddell, in St Bosuellis ; committit in the moneth of I^m.V^c.lxxxxviij yeris, or thairby. ITEM, for the thiftious Steilling of xvj nolt, pertening to the Laird of Bemersfyde ; committit in anno I^m.V^c.lxxxxviiij yeris. ITEM, for the thiftious Steilling of tuentie nolt, ane yeir syne or thairby, pertening to the Lady Newtoun, ITEM, for

¹ In the Verdict of the Assise, it is said to have been in company with ‘ the Laird of M^cGregour ; ’ so that Allaster of Glenstra was the Chief of this Clan, either by right of blood, or Chieftain for the time, by election, as was usual among the Clans. See Jan. 20, 1604.

the thiftious Steilling furth of the landis of Belfis, in the moneth of I^m.Vj^c. and ane yeiris of fyve fcheip, pertening to ane fervand of George Davidfones. ITEM, for the thiftious Steilling and away-taking of ane meir, pertening to George Wilsoune in Langnewtoune, furth of his duelling hous in Langnewtoune; committit ane yeir fyne or thairby. ITEM, for a commone briggane¹ and notorious cownone theif, reffet of thift, outputing and inputing of thift.

PERSEWARIS, Iffobell Trumbill, as dochter (to Walter) and fister (to Williame Trumbill); George Rutherford, as kinsman; Mr Johne Nicolfoune, substitute for our fouerane lordis aduocat.

PRELOQUUTOIRIS for the pannell, Mr Johne Ruffell, Mr Thomas Craig, Mr Williame Douglas, David Ramfay.

It is allegit be the pannell, that na proces aucht to be grantit vpon the Dittay, vnto the tyme he be fummond vpon xv dayis wairning, in respect the deidis contenit in the Dittay is done xxiiij yeir fyne.—It is anfuerit be the Aduocat, that he was denuncet rebell and put to the horne for ane of the flauchteris contenit in the Dittay, viz. ffor the flauchter of vmq^{le} Williame Trumbill, and ane Commiffiounne grantit be the Kingis Maieftie and Counfall for taking of him; be vertew quhairof he was takin and apprehendit and presentit to the Counsale, vpon the fyft day of July; att the quhilk tyme, in presens of the perfewer and defender, than present, this day (being that day xv dayis) was assignit to the perfewer to perfew him for that cryme and all vther crymes could be laid to his charge: And thairfoir, thair being xv dayis grantit to the Counsell to deliberat vpon his defence, thair aucht to be na forder citatiounne grantit.—To the quhilk it is anfuerit be the pannell, concerning the Hoirning, he is relaxt. *Secundo*, as to the Commiffiounne, na Commiffiounne can be grantit to preiudge him of his lauchfull defenffis, *parie non citata*. As to the laft, he gat na coppie of the Dittay, and thairfoir man be fummond on xv dayis wairning.

As for the flauchter of vmq^{le} Williame Trumbill, sayis he was flane be him in his awin defense, he being affageit within his awin hous. As to the flauchter of vmq^{le} Johne Hammiltoune, denyis, and offeris him to the tryell of ane Affyse. As to the flauchter of Walter of Raflat, sayis he was flane at the horne, and producet the hoirning for verifeing thairof, raifit at the instance of Andro Comendater of Jedburgh, quhair the said Walter, for nocht removeing fra the landis of Raflat, and half ane quarter of the toun and landis of Belfis; quhilkis letteris ar of the dait the xx day of Apryle 1581, and of our fouerane lordis regne the xiiij yeire; denuncet the xij day of Julij, anno foirsaid.—It is alleget be the Aduocat, to the laft pairt, that albeit he was at the horne, the pannell aucht nocht to vfurpe the Kingis auctorite vpoune him, to flay ony man at his awin hand.

THE JUSTICE continewis Interloquitour to the morne.

Jul. 20.—THE JUSTICE Remittis the haill poyntis of Dittay, except for the flauchter of vmq^{le} Walter Trumbill of Raflat, to ane Affyse.

It is allegit aganis James Waddell, burges of Jedburghe, that he can nocht pas

¹ Robber; Fr. *brigand*.

vpone this Affyse, becaus thair is deidlie feid standand betuix the haill name of Trumbill, on the ane pairt, and the Laird of Pharniherst, the haill Keris, and the haill inhabitantis of the toune of Jedburghe, on the vther pairt, for the Slauchter of Thomas Ker, brother to the (Laird of) Pharniherst.

The Aduocat protestis for Wilfull errour, in caice that thay acquit George Trumbill of the slauchter of vmq^{le} Williame Trumbill, becaus he confest the committing of the Slauchter out of his hous, he being assageit, and allegeit in his defence.

The Aduocat, for instructing of the Dittay, producet ane Testimoniall, beiring the pannell to be excommunicat for Slauchteris, Murthouris, Incestis and Adultereis, &c.; subscryuit be Mr George Douglas, clerk of the Presbiterie of Jedburghe.

VERDICT. The Affyse, be the mouth of Walter Eleise, in Danieltoun, chancellor (be pluralitie of voittis), ffand, pronunceit and declairit the said George Trumbill to be ffylit, culpabill and convict of beiring, weiring and schuiting with hagbuttis and pistolettis, contrair the tennour of our fouerane lordis Actis of Parliament; committit betuix the toune of Jedburghe and the place of Belfis, in anno I^m.Vj^c. and tua yeiris: And to be Clene, innocent and acquit of the haill remanent crymes aboue specifit, mentionet in the said Dittay; and speciallie, of the slauchter of the said vmq^{le} Williame Trumbill, becaus the samyn was done in his awin defens.

Quhairvpoune the said George Trumbill askit instrumentis.

(Aug. 18.)—SENTENCE. The Justice decernit and ordanit the said George Trumbill to be tane 'to the mercat-croce of Edinburghe, and thair his richt hand to be strukin frome his airme, as convict of the said cryme; quhilk wes gevin for dome.'¹

Sorcery — Charming — Abusing the People.

Jul. 21.—JAMES REID, sumtyme serveand to George Anderfoun in Mussilbur^t.

Dilatit, accusit and persewit, be Dittay, of the crymes following, to wit,

FOR ane cowmone Sorcerer, charmer and abuser of Godis peopill, be geving him selff out to haill all kynd of feiknes: Quhilk craft he lernit fra the Devill, his maister, in Bynnie-craigis and Corstorphin-craigis, quhair he met with him and consultit with him to lerne the said craft; quha gaif him thrie penneis, at ane tyme, and a peice creische² out of his bag, at ane vther tyme; he haifing appeirit to the said James dyuerse tymes, quhyles³ in the liknes of a man, quhyles in the liknes of a hors: with quhome he lykwayis dyuerse tymes consultit sen his first meiting, quhilk is threttene yeir fyne or thairby; quhilk lykwayis

¹ See Aug. 23, 1602.

² Grease, fat.

³ Sometimes, occasionally.

lernit him to tak fouth-rynnand-watter¹ to cuir the saidis diseiffis. ITEM, for cureing of Sara Borthuik, be his Sorcerie and devilrie, quha was grevoullie trubillit and diseasit, be bringing of south-rynnand-watter fra the Schyreff-brayis-wall, and casting a certane quantitie of salt and quheit about hir bed; be the quhilk cuir scho was hailit. ITEM, fforfamekill as he, be the speciall persua-fioune of Jonet Cryftie, dochter to Johne Cryftie at Cryftiesounis mylne, and his mother, consultit with the Devill, for distructioun of Dauid Libbertoun, baxter, burges of Edinburghe, his spous, thair coirne and guidis; quha causit him tak a peice raw flesche, quhairvpone he maid nyne nekkis,² and inchantit the samyn, quhilk he delyuerit to the said Jonet, and causit hir lay ane pairt thairof vnder the mylne dur, and the rest vnder the stabill dur, for distructione of his hors and cattell. And als, inchantit to him nyne stanis, quhilk the said James cuist vpone the said Dauid Libbertones landis, for distructione of his coirnes. Lyk as, the said James and the saidis Jonet Cryftie and hir mother infformet³ and maid ane pictour of walx, quhilk the Devill inchantit; and he and the wemen turnit the pictour at ane ffyre, in the said Johnne Cryftiesones hous, for distructioun of the said Dauid Libbertones selff. ITEM, for cureing of the said Johnne Cryftie, being diseasit of a swalling, in putting of thre filk poyntis,⁴ in his devilisch maner, about his waist, quhilk remanit ten oulkis⁵ with him; and went away fra the said Johnne, be quhat way he knew nocht.

VERDICT. The Assyse, be the mouth of Johne Howie, merchand, chancellor (all in one voce), ffand, pronuncet and declarit the said James Reid to be ffylet, culpabill and convict of the haill crymes aboue specifeit.

SENTENCE. To be tane to the Castel-hill of Edinburghe, and thair to be wirreit⁶ at ane staik; and his body to be brunt in assis:⁷ And all his moveabill guidis to be escheit, and inbrocht to his hienes vse, as convict of the saidis crymes.

Murder — Robbery.

Jul. 27.—THOMAS HORSBURGH, burges of Peiblis.

Dilaitit and accusit of the Murthour and Slauchter of vmq^{le} Williame Chisholme in Peibillis, with his awin quhinger, vnder filence and clud of nycht: And als, of the thiftious steilling of ten sax li. peces,⁸ and tuentie merkis in quhyte filuer, pertening to the said vmq^{le} Williame, vnder the said Williames bed-heid; committit in the moneth of Marche lastbypast: And siclyk, for the thiftious steilling of tuentie tua li.⁹ fra his guid-mother,¹⁰ committit nyne yeir fyne, or thairby.

¹ This superstition still obtains, in many remote places of Scotland; where the virtues of such water are firmly believed in. ² *Nicks*, notches. ³ Formed, constructed. ⁴ Laces, ties. ⁵ Weeks.

⁶ Strangled. ⁷ 'The 21 of Julij, James Reid brunt, for consulting and useing with Sathan and Witcheis; and quha was notably knawin to be ane counsellor with Witches.'—*Birrel's Diary*.

⁸ Ten £6 pieces. ⁹ £22. ¹⁰ Mother-in-law.

VERDICT. The Assyse, all in ane voce, be the mouth of Michell Hunter of Polmwid, chancellor, ffand, pronuncet and declairit the said Thomas to be ffylet, culpabill and convict of the saidis crymes.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be hangit on ane gibbett quhill he be deid ; and thaireftir his heid and richt hand to be ftrukin fra his body ; and the heid to be fet vpone ane prik vpoun the ftepill-heid of Peiblis ; and his richt hand to be put on the Eift-pairt thairof : And all his moveabill guidis to be efcheit, &c.

Usurpation of King's Authority — Hurting and Wounding.

Jul. 29.—ALEXANDER SEYTOUN, in Boigin-Johne.

Dilatit for the taking and apprehending of Mr Johne Cardno, convoying him to his hous in Boigin-Johne, and detening him captiue and presoner, be the space of xxiiij houris ; and hurting of him with ane rapper¹ in the body, and vfurpation of our fouerane lordis authoritie vpoun him, in taking of the said Mr Johne ; committit in Nouember lastbypast.

The pannell askis instrumentis of his comperance on pannell, and protestis for releif of his cautioner ; and als, he offerris him reddie to vnderly the law for the said cryme, disassenting till all continewatioune.

The Justice continewis to the Justice-air of ' Abirdene, tercio Itineris, (vel super premonitione) xv dierum.' James Chene of Straloch, cautioner.

Slaughter.

Jul. 30.—GEORGE HARRETT of the Coittis.

Dilatit for the Slauchter of vmq^{le} Williame Dowglas, in Muffilburgh, feruitoure to Williame Erll of Angus, lord Douglas, &c. ; committit in the moneth of Julij, the yeir of God I^m.Vj^c. and twa yeiris.

Marioune Wilfoun, the relict, produceit our fouerane lordis Letteris, dewlie execute and indorsat, &c. Thomas Harrett in Lintoune, his cautioner, vnlawit and amerciast in the panis contenit in the Actis of Parliament, viz. in the payne of ane hundreth merkis ; and als adiudget the said George Harrett to be denunceit oure fouerane lordis rebell, and putt to the horne ; and all his movable guidis ordanit to be efcheit.

Murder.

Jul. 30.—MARIOUN WARDLAW, spous to Johne Kennedie, gantillet maker, burges of Edinburghe.

Dilaitit of airt, pairt, red and counfall of the Murthour committit be Williame Boirthuik, tutour of Boirthuik, Johne Boirthuik his brother, and vtheris

¹ Rapier.

thair complices, in cuming to James Frammis duelling-hous in the Cannogait, vnder scylence of nycht, and strykeing of him nyne straikis in the body and heid, to the effusioun of his body; and levand him for deid.

PERSEWAR, James Framme, gantillet-maker in Edinburghe.

Continued to the air of Edinburghe, 'tercio Itineris (vel super premonitione) xv dierum.'

**'Field of the Lennox'—Slaughter of Colquhouns—
Stouthreif, &c.**

Aug. 12.—DUGALL M'GREGOUR and Neill M'Gregour Pudrache.¹

Dilatit and accusit of the crymes following; to wit, the said *Neill M'gregour* of airt and pairt of the Slauchter of vmq^{le} Patrik Layng and of vmq^{le} Johne Reid, wobster, fervandis to the Laird of Luse; committit in December lastwas: AND siclyke, of airt and pairt of the thiftious Steilling of tuelf scoir guidis furth of the Laird of Lusses boundis, in the Lennox;² committit the tyme foir-faid. AND siclyk, the said *Dougall M'gregour*, of airt and pairt of the Slauchter of foure men, fervandis to the Laird of Luse, in the lait feild of the Lennox;³ and being in companie with the Laird of M'gregour and his companie at the same feild; and airt and pairt of the Slauchteris, reiffis, thiftis and foirningis committit that day, in the moneth of Februlare last.

VERDICT. The Assyse, be the mouth of James Broun, burges of Dumfreis, chancellor, ffand, pronuncet and declairit the saidis Neill M'Gregour Pudrache, and the said Dougall M'gregour to be fylit, culpabill and convict of the haill crymes aboue specifeit.

SENTENCE. Thairfoir the said Justice-depute, be the mouth of Walter Peirie, dempster, decernit and ordanit the saidis Neill and Dougall M'gregour to be tane to the Burrow-mure of Edinburghe, and thair, vpone ane gibbet, to be hangit quhill thay be deid; and all thair moveabill guidis to be escheit, &c.

Incest—Adultery—Theft, &c.

Aug. 23.—GEORGE TRUMBILL, in Belfis.⁴

Dilaitit, accusit and persewit, be DITTAY, of the crymes following, viz.

FORSAMEKILL as it is expresse provydit, statute and ordanit be our souerane lordis Actis of Parliament, that all notorious and manifest Adultereris and Incestuous persones sould die the daithe, and thair haill moveabill guidis to be escheit to our souerane lordis vse; and all sic persones quha ar excommunicat for Adulterie, ar be Act of Parliament estemit for notorious and manifest adultereris; as the saidis Actis at mair lenth-beiris: And trew it is, that the said George Trumbill hes in the monethis of Januare, Februlare, Marche, Apryle, Maij, Junij, Julij, August, September, October, November and December, in the yeiris of God I^m.V^e.lxxxxviiij, lxxxxix, 1600, 1601, and I^m.V^e. and tua yeiris; at the leift in ane or vther of the saidis monethis and yeiris, abuset his body in the filthie cryme of Incest and

¹ Pudrache signifies of the country or district of Balquhiddier.

² See Mar. 20, 1603, &c.

³ See Jan. 20,

1604.

⁴ See Jul. 9, 1603, and Aug. 18, when he had his right hand struck off for shooting pistols, &c.

Adulterie with Marioun Trumbill, spous to Jok Trumbill in Belfis, his brother sones wyfe ; ffor the quhilk fact he is excommunicat within the Presbiterie of Jedburcht ; as the sentence of excommunicatione proportis. ITEM, for the thifteous steilling of ane gray horse furth of the landis of Raflat, pertening to vmq^{le} Walter Trumbill of Raflat ; committit in the moneth of September, 1577. ITEM, for the steilling of xx oxin and ky furth of the landis of Raflat, fra the said vmq^{le} Walter ; committit in the moneth of September lxxix yeiris. ITEM, for the thiftious steilling and reifing of foure horse, fra foure mylleris of Jedburcht ; committit thre yeir syne, or thairby. ITEM, for the steilling of ane naig fra Walter Trumbill now of Raflat.

PERSEWERIS.

Sir Thomas Hammiltoun of Monkland, kny^t, aduocat to our souerane lord ; George Rutherfurd.

PRELOCUTORIS for the pannell, Mr Johne Ruffell, Mr Williame Douglas.

It is allegit be George Trumbill, that he fould nocht be putt to ane Affyis for the crymes of Thift in the Dittay ; becaus, within this moneth, he wes chargeit befor your lordships of findrie particuler poyntis of thift and commoun thift ; comprehending all pointis of thift, except itt wer for pointis of thift committit sen his clangeing. The Aduocat alledgis it is nocht relevant.

THE JUSTICE ordanis George Trumbill to be putt to the Affyse, for all crymes contenit in the Dittay, except sic as he is alreddie clangeit of.

The Aduocat takis instrumentis of the fwering of the Inqueift ; and of production of the Presbiteries Testimoniall, testifeing George Trumbill to be excommunicat for Incest and Adulterie, contenit in the Dittay : And protestis Wilfull Errour, in caice thay acquit. And further, produceis Letteris of Hoirning, to verifie the vther foure poyntis of Dittay, and of his lang remaning vnrelaxit ; and protestit for Wilfull Errour, in caice thay acquit, in respect foirfaid.—The pannell takis instrumentis of Halyburtoune of Moreislaw comperance, and fwering of the twa pointis of the Dittay, viz. of the mylleris naigis, and Watt Trumbillis naig. The Aduocat askis instrument of the fwering of the Dittay, be the Guidman of Morislaw.

VERDICT. The Affise, having ‘ be pluralitie of voitis ’ chosen Williame Cokburne of that Ilk chancellor, thay ffind, pronuncet and declairit the said George to be ffylet, culpabill and convict of the haill crymes *respectiue* aboue writtin.

SENTENCE. And thairfoir the said Justice-depute, be the mouth of Robert Scott, dempster of Court, decernit and ordanit the said George to be tane to the Castell-hill of Edinburgh, and to be hangit on ane gibbett quhill he be deid ; and his haill landis, heritageis, tenementis, annuelrentis, possessionis, coirnis, cattell, infycht pleniffing, guidis and geir, to be forfaitit and escheit to our souerane lordis vse, as convict of the saidis crymes.

Slaughter — Woughing Oren — Stouthreif, &c.

Sep. 23.—JOHNNE JOHNNSTOUN, callit of Loch-hous.

Dilatit, accuset and persewit be Sir Thomas Hammiltoun of Monkland, knycht,

aduocat to our fouerane lord, ffor airt and pairt of the flauchter of vmq^{le} Johnne Cunninghame, fervand to the Erle of Glencairne ; committit in the yeir of God I^m.V^c.lxxxxvj yeiris, or thairby, within the burch of Edinburgh. ITEM, for airt and pairt of the flauchter of vmq^{le} Gilbert Roriesoune. ITEM, for airt and pairt of the hoching¹ of Robert Cuninghames oxin. ITEM, for airt and pairt of the maisterfull and stouthfull reveing fra James Lichtoun, Johne Kello, Johne Byres, George Cuninghame, merchandis burgeffis of Edinburgh, . . . Hunter in Glesgow, and Williame Walker at Bellis-mylne, of thair purffis and money being thairin, estimat to thre thousand (and viij^c) merkis ; and away-taking of thair nagis fra thame ; committit in the moneth of Julij 1602 yeiris, at the Rowne-tre-barne, betuix Air and Wigtoune.

ASSISA.

Charles Campbell of Horscleuch,
Charles Campbell of Skeringtoun,

George Campbell of Gelt,
Williame Campbell of Walwoid.²

VERDICT. The Assyse all in ane voce, be the mouth of the said Charles Campbell of Horscleuch, chancellor, ffand, pronuncet and declairit the said Johnne Johnnestoun of Loch-hous, accoirding to his awin Confessioun, maid in judgement, and Depositiones subscryuit with his hand, to be ffylit, culpabill and convict of the hail poyntis of Dittay aboue reherfit.

SENTENCE. To be tane to ane scaffald at the mercat-croce of Edinburgh, and thair his heid to be strukin fra his body. And all his moveabill guidis to be efcheit, &c.

[*Mr Andrew Kneilland, Justice-Depute.*³]

Diet continued owing to Plague in Edinburgh.

Nov. 8.—JOHNNE COLQUHOUN, younger of Campstradden,⁴ Dougall M^cFarlen, and Johne M^cConeill V^cneill M^cFarlane and others.

Compeirit Antoun Whyte, wryter, and producet ane delyuerance grantit be the lordis of Secreit Counfall, subscryuit be my Lord Chancellor, &c. as follows.

MY LORDIS OF COUNSALL, vnto your lordschipis humlie menis and schawis we your feruitouris, Sir Johne Murray of Tulliebarden, kny^t, and James Hadden of Glennageis : That quhair, we and ather of ws haif purchest lettres, quhairwith we haif causet charge *Johne Colquhoun, younger of Campstradden*, Dougall M^cFarlane, Johne M^cConell V^cneill Makfarlane, and certane vtheris perfonis thair complices, specifit in the saidis letteris direct thairvpoune, to find caution, that thai fall compeir befor our fouerane lordis Justice and his deputis within the Tolbuthe of Edinburgh, the aucht day of November instant, to vnderly the law for certane crymes mentionet in the saidis letteris : At the raising of the quhilkis letteris, we and ather of ws ffand caution actit in the buikis of Adiornall, for repointing of the saidis letteris, deulie execute and indorfate, at the day foirfaid, vnder the panes contenit in the Actis of Parliament. And be reffone of the fuspitioune and danger of the plaige of pestilence

¹ Hamstringing. ² James Johnneston of Lochwood beheidit at the crosse of Edinburgh, for oppression, slaughter, and raising of fyre and vthir maney crymes.—*Birrel*. ³ The rest of the Assise composed of merchants. ⁴ This Judge is first noticed, Nov. 3, 1603. ⁵ See p. 432, where he is said to have been killed, 7th February preceding !

within the said burcht of Edinburgh, quhilk hes intervenit sen the raising of the saidis letteris, we nor the personis summond on the Assyse of the persones dilaitit, may nocht guidlie repair thither, for feir of the said plague. Quhairthrow, necessar it is that the day foirsaid be prorogat and continewit to ane certane vther competent day thairefter, that (gif it pleis God to stay the said plague) we may faillie refoirt and repair to the said burcht of Edinburgh, to the effect aboue specifeit. Heirfoir, we beseik your lordschipis, that ye will give command to our souerane lordis Justice, Justice-clark and thair deputis, to continew the day foirsaid, to ane certane vther lauchfull competent day thaireftir; and to wairne the partie and the persones summond vpon the said Assyse thairto; quhairthrow we may the mair faillie repair to the said burcht to the effect aboue writtin: Quhairanent it will pleis your lordschipis to dispenfe with us, and all panes and vnlawis, quhairinto we or ather of ws, or any of the persones summond vpon the said Assyse, may any maner of way be vnlawit or adiudget, for our non-compeirance, at the said viij day of November instant: And your lordschipis ansuer humlie we beseik. [FIAT UT PETITUR.] (Sic subscribitur) MONTROISS, CANRIUS. M. R. YOUNG.

According to the quhilk Warrant, the Justice continewit the said dyet to the said xxij day of December nixtocum; and ordanit the parteis to be summond, and ane Assyse also to be summond to the said day; and the cautioner to stand obleift for repoirting of the saidis letteris, deulie execute and indorsate, agane the said day.

Slaughter.

Nov. 17.—JAMES KYNNAIRD in Inchtur, Williame Haitlie in Balgay, and Williame Kynnaird, sone to the Laird of Kynnaird.

Patrik Bruce of Fyngask and Johnne Kynnaird, fear of that Ilk, amerciaded in the pane of ane hundreth merkis, for ather of the saidis James, &c. for nocht entrie of thame to haif vnderlyne the law, for airt and pairt of the felloun and crewall Slauchter of vmq^{le} Johnne Scherp, feruitour to the Laird of Ruthven; committit vpon the first day of July lastbypast, vpon set purpois, prouisioun and foirthocht felony. And James Kynnaird, &c. to be denuncet rebellis, and put to the horne, &c.

Slaughter.

Nov. 23.—JAMES CUMING, fear of Alter, Johne Cuming, his seruand.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Thomas Hay of Edinvaill; committit the xx day of July lastbypast, betuix the place of Alter and the toun¹ of Edinvaill, vpoun sett purpois, provisioune and foirthocht felony.

Williame Hay, as brother, and Robert Hay, as sone, to vmq^{le} Thomas Hay, produced the letteris, dewlie execute, &c.—Alexander Rychardsoun, Minister of Dolese, declarit vpoun his grit aith, tane vpoun ane buik, that the said James Cuming wes heavelie diseifit with ane flux of natour, and ane flux of his body, and that he wes subiect to the said seiknes: And Mr Alexander Cuming offered to prove that ‘he may nocht travell,’ &c.—Williame Cuming, fear of Ernfyde,

¹ Farm-steading.

as cautioner, was vnlawit for non-entrie of the said James Cuming, in the pane of ane thowfand mark, and for nocht entrie of Johne Cuming, in the pane of ane hundreth merks ; and they ordanit to be denunceit, &c.

Nov. 24.—Letters of Horning given in by Robert Hay, feruitour to Frances Erle of Erroll, to be regiftrate againft the pannell, with executions and denunciatiounis, &c.

[*CURIA tenta per Archibaldum Ergadie Comitem, Justiciarum Generalem et Magistrum Willelmum Hairt ejus deputatum principalem.*]

Treason — Hamesucken — Oppression — Stouthreis, &c.

Jan. 12, 1604.—GEORGE MELDRUM, younger of Dumbrek.

Dilatit, accuset and perfewit be Sir Thomas Hammiltoun of Monkland, aduocat to our fouerane lord for his hienes entreis, of the crymes following, to witt.

FORSAMEKILL as the said George, haifing confaut ane deidlie feid, rancor and malice aganis Andro Meldrum, his brother, he, accompaneit with dyuerse vtheris his complices and fervandis, to the number of ten perfones, or thairby, all bodin in feir of weir,¹ with hagbutis, dagis and pistolettis, exprellie prohibeit to be borne, worne, vset or fshot with, be our fouerane lordis Actis of Parliament, in the moneth of or thairby, the yeir of God Im.Vc. fourfcoir nyntene yeiris, being four yeir fyne, or thairby, come to the Mylnetoun of Dumbrek, quhair the said Andro was, in sober and quyet maner for the tyme, &c. ; and thair fet vpon him, and crewallie invalidit him for his Slauchter, and hurt and woundit him in his hand, schoulder and face, to the effusioune of his bluid in greit quantitie : And thaireftir treffonabillie tuik the said Andro captiue and priffoner, had and convoyit him to the place of Dumbrek, quhair the said George detenit him as captiue, be the space of aucht oulkis, or thairby, in ftrait firmance and captiuitie ; and thaireftir transportit him to the place of Ernesfyde, quhair the said George and his fervandis keipit the said Andro in ftrait firmance, be the space of fyftene or tuentie dayis, quhill he escaipit fra thame perforce : Vfurpand thairby our fouerane lordis auctoritie vpon him, in taking of the said Andro, his hienes frie lege man, but² Commiffioun, and detening him in captiuitie, be the space foirfaid ; committing thairby manifest Treffone : AND als, for contravening the tennour of the Actis of Parliament, in beiring, weiring and vseing of the saidis hagbuttis and pistolettis. ITEM, fforsamekill as the said George, haifing confaut ane deidlie feid, rancour and malice aganis Andro Meldrum of Achquharteis, laitlie, in the monethis of September or October, the yeir of God Im.Vjc. yeiris, being accompaneit with Patrik Scheill and Alexander Meldrum, his fervandis, bodin in feir of weir, with hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament, come be way of Hamesukkin to the place of Achquharteis, vnder filence and clud of nycht, about foure houris in the moirning, befoir day ; and thair, the said George darnit³ him selff and his fervandis in ane out-hous, belanging to the said Andro, neir to the said place, quhair he remanit quyet, quhill about ellevin houris of the day, that the said Andro Meldrum come furth to ouerfie his awin turnes,⁴ and thair fet vpon the said Andro Meldrum, and treffonabillie pat violent handis in his perfone, tuik him captiue and priffoner, and convoyit him away with him as ane malefactour, fra his said duelling-hous, and brocht him south ouer to Andro Fyfes hous, in the Burrow-mure of Edinburgh, besyde Merchinstoune ; quhair the said George detenit him captiue, be the space of thre or foure dayis thairefter, quhill the said Andro (‘*eschewit*,’ or ‘*escaipit*’⁵) furth of the said hous, by⁶ his knowledge and aganis

¹ Arrayed in warlike manner.

² Without.

³ Hid, concealed.

⁴ Concerns, business, affairs.

⁵ Until the said Andrew *escaped*. A word is omitted in the Record.

⁶ *Beside*, without or contrary to his knowledge, unknown to him.

his will : Vfurpand thairthrow our fouerane lordis authoritie vpon him, in taking and keiping captiue of the said Andro Meldrum of Acquhartis, his hienes frie liege man, but¹ commissioun or auctoritie, and committing thairby manifest Treffone : AND als, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbutis and pistolettis. ITEM, fforfamekill as the said George, haifing confauet ane deidlie feid, rancour and malice aganis Mr Alexander Gibfone, ane of the Clerkis of our fouerane lordis Counsell and Sessioun, he, accompaneit with Nicoll Jardane, Robert Jardane, Johnne Johnstoun, callit *Swyne-fute*, Johnne Ker, sone to the Tutour of Gradane, and Alexander Bartilmo, with tua fute-boyis, ane company of cowmoun and notorious thevis, brigandis and murtherouris, all bodin in feir of weir, with fuordis, hagbutis and pistolettis, expresse prohibeit to be borne or worne, as said is, laitlie, in the moneth of October or September, the yeir of God, I^m. sax hundreth and ane yeiris, being adverteist of the said Mr Alexanderis dyett, be ane fellow callit Craik, the said George Meldrumis awin man, quhome he fend to espy the said Mr Alexanderis dyet within the Citie of St Androis ; at the quhilk tyme, he set vpon the said Mr Alexander Gibfone, Mr Alexander Levingstoun, aduocat, and Robert Guthrie, seruant to the said Mr Alexander Gibfone, within the boundis of the scherefdome of Fyffe, besyde the Watter-syde of Dundie, quhair thay war in sober and quyet maner rydand for the tyme, dreidand na harme, iniurie, or persute of ony persones, bot to haif leuit vnder Godis peax and our fouerane lordis : and thair crewallie Invaident thame for thair Slauchteris, and compellit thame to rander thame selffis to the said George and his compliceis foirfaidis ; and tressonabillie pat violent handis in thair persones, tuik thame captiues and prissoneris, had and convoyit thame away with him out of the way, and besyde Couper-in Fyfe, (he being ane landit gentilman,) tressonabillie, be way of maisterful Stouthreif, rest fra thame thair purffis, with certane gold and siluer being thairin, extending to the quantetie of thre hundreth merkis or thairby ; and thaireftir convoyit thame to the toun of Kinghorne, quhair he demittit² the saidis Mr Alexander Levingstoun and Robert Guthrie : And thairfra convoyit the said Alexander Gibfone, and brocht him with thame selffis ouer the fferrie of Kinghorne to Leyth, and convoyit him captiue to Williame Kayis house in Leyth, quhair Serjand Moffet come to thame ; and thairfra the said George maist tressonabillie convoyit the said Mr Alexander Gibfone captiue by³ the Palice zet of Halyrudhous, throw ane gritt pairt of Louthiane and throw Tueddell, to the toun of Melrois ; and befor thair entrie within the said toun, the said George, with his complices, devydit the gold that was in the tua purffis amangis thame, quhair of ilk ane of thame gat tuentie merkis, or thairby, for thair pairtis ; and fra the said toun of Melrois thay convoyit the said Mr Alexander captiue vnto Ingland, to George Ratleiffis house ; quhair thai detenit him captiue and prissoner be the space of aucht dayis or thairby : Vfurpand thairby our fouerane lordis auctoritie vpon thame, in taking the saidis persones, thay being his Maiesteis frie leigis ; haifing na power nor Commissioun to that effect ; in manifest contempt of his Maiestie : committand thairby manifest Treffone : LYK AS, the said George, being ane landit Gentilman, committit maist tressonabill Thift and Stouthreif, in reiffing of thair purffis, and gold foirfaid being thairin ; AND siclyk, for beiring and weiring of hagbutis and pistolettis, contrair the tennour of the Actis of Parliament. Off the quhilkis crymes *respectiue* aboue writtin, the said George was speciall actour ; at the leif, airt and pairt thair of. AND last, the said George being indytit and accusit, fforfamekill as he, accompaneit with Johnne Meldrum, his brother, and dyuerse vtheris, his complices, laitlie, in the moneth of November lastbypast, being bodin in feir of weir, with hagbuttis, dagis and pistolettis, prohibeit to be borne or worne, as said is, be our fouerane lordis Actis of Parliament and Secreit Counfall, come to the place of Dumbrek, pertening heritable, and being in the lauchfull possessioun of Andro Meldrum, his brother, keipit be him and his seruandis, and tuik the samyn place perforce, and held and detenit the samyn be the space of sevin oulkis or thairby.⁴

¹ Without. ² Suffered to go, dismissed. ³ Past. ⁴ This latter part of the Dittay is thus shortly given in another place of the Record : ' And for taking of the place of Dumbrek, and keiping of the samyn aganis the Kingis gaird, quha, be vertew of ane Commissioun, was commanded to pas to the said hous and chairge him to rander the samyn ; quhilk he dissobeyit.

ASSISA.

James Tennent of Kairnes,	Williame Foullertoun of Arde,	Jo. Creichtoune, Y ^r of Strathurd,
J ⁿ Kynneir, younger of that Ilk,	Alex ^r Falconer of Halkertoun,	Da. Haddene, tutour of Glennageis,
Mr Patrik Balfour of Pitcullo,	Johnne Veitche of Dawik,	Thomas Ker of Caveris,
George Murray of Brochtoune,	Williame Burnet of the Bairnes,	Geo. Hereis of Kirktone of Elthe,
Archebald Ogilvie of Keillour,	Aulay M'caulay of Ardincapell,	Johnne Boyle of Kelburne.

For verificatioun quhairof, the said Sir Thomas Hammiltoun producet the said George Depositiones, subscryuit with his hand, beiring his Confessioun of the haill crymes aboue specifeit. The Aduocat askit instrumentis, (1.) Of the sweiring of the Assyis: (2.) That George Meldrum declairis he becumis in his Maiesteis will, for the taking and hurting of his brother, and for the taking of the Guidman of Acquhariteis. (3.) Of George Meldrumis cuming in will, for the offence done to Mr Alexander Gibsoun and his company. (4.) Of the reiding of the pannellis Depositiones to the Assyse judicialle: And (5.) In respect thair-of, and of his Confessioun thairof, in judgement, and becuming in will for the haill Dittay, protestis for Wilfull Errour, in cais thai acquit.

VERDICT. The Assyse, be the mouth of the said Alexander Falconer of Halkertoun, chancellor, fand, pronuncet and declairit the said George Meldrum, younger of Dumbrek, to be ffylet, culpabill and convict of the haill crymes aboue specifeit.

SENTENCE. And thairfoir, the said Justice-generall and Mr Williame Hairt, his principall depute foirfaid, be the advyse of John Erll of Montrois, chancellor of this realme, and dyuerse vtheris Lordis of his Maiesteis Secreit Counfall and Seffioun, than sitting in judgment, as Assessoris, (ffinding the saidis crymes to be treffonable), be the mouth of Robert Scott, dempster of Court, Ordanit the said George Meldrum to be tane to ane scaffold, besyde the mercait croce of Edinburghe, and thair his heid to be strukkin fra his body; and all his landis, heritages, takkis, steidingis, rowmes, possessiones, coirnes, cattell, insicht pleniffing, guidis and geir to be fforfalt, escheit and inbrocht to our fouerane lordis vse, as convict of the saidis treffonable crymes.—Quhilk wes pronunceit for dome.¹

[*Mr Williame Hairt, Justice-Depute.*]

'Field of the Lennox,' or 'Conflict of Glenfruite' — Slaughter of the Colquhouns — Stouthreis — Treason — Fire-raising, &c.

[THE proscription and the cruel and systematic persecution of the CLAN-GREGOR, for a long series of years, although, in the abstract, a subject familiar to every reader of Scottish History, has hitherto been very imperfectly explained. The Criminal Records, and the Acts of the Privy Council, throw much light on all the various branches of this extraordinary event. To save the necessity of future repetition, it appears to the Editor to be necessary, at the outset of these proceedings, to give a very brief sketch of the circumstances which led to 'THE FIELD OF THE LENNOX'—or 'THE RAID' or 'CONFLICT OF GLENFROON'; and of those events which ultimately terminated in the Execution of

¹ 'The 12 of Januar, George Meldrum of Dumbrek beheidit, for Oppression and uther odious crymes.'—*Birrel*.

the Laird of MacGregor, and of many others of his name. All the future oppression and persecution of the race of the MacGregors ostensibly take their rise from this Conflict.

The Clan-Gregor, which, from whatever causes, had been for some time looked upon as an unruly tribe, was, for some years previous to 1603, placed under the control of ARCHIBALD (seventh) EARL OF ARGYLE, who, as King's Lieutenant in the 'Bounds of the Clan-Gregor,' was invested with very extensive powers, and who, by his acceptance of the office, was made answerable for all excesses committed by the Clan. In these circumstances, it might be supposed that it was Argyle's interest, as it certainly was his duty, to have done all in his power to retain the Clan-Gregor in obedience to the laws; but, on the contrary, it appears that, from the time he first, as King's Lieutenant, acquired the complete control of the MacGregors, the principal use he made of his power was artfully to stir up the Clan to various acts of aggression and hostility against his own personal enemies, of whom, it is known, COLQUHOUN of LUSS was one. It is to this crafty and perfidious system of the Earl, therefore, that we must solely trace the feud between the Colquhouns and MacGregors, which proved, in the end, so hurtful to both; a result, no doubt, all along contemplated by this powerful but treacherous Nobleman. But it is unnecessary to enlarge upon this point, as the Dying Declaration of the Laird of MacGregor places in a very clear light the cruel and deceitful policy pursued by Argyle, and which was too frequently resorted to by others, in those days, for *quieting* the Highlands. It may be remarked, that this interesting document, besides undoubtedly bearing internal evidence of truth, is corroborated, in almost every part of it, by the Public Records.

It is also to be remarked, as particularly worthy of notice, that at the period of this fatal Conflict, both of the contending parties were, in a manner, equally armed with the Royal authority; the Laird of Luss having raised his forces under a Commission, emanating from the King himself; while the Laird of MacGregor marched to invade the Lennox, under the paramount authority of the King's Lieutenant!

The popular accounts of this transaction charge the MacGregors with two atrocities, committed after the battle, viz. the Murder of Sir Humphrey Colquhoun, who had fled from the field of battle, and had taken refuge in the Castle of Bannachra; and the Slaughter of a number of defenceless boys, from the Grammar School or 'College' of Dumbarton,¹ who, from curiosity, came to see the fight, and had, by Colquhoun's order, been put into a barn for safety; where, on the success of the Highlanders, they were said to have been murdered. In justice to the Clan-Gregor, it is but fair to mention that, on investigating this subject, it clearly appears that Sir Humphrey was murdered in his Castle of Bannachra, in July 1592, above eleven years before this Conflict, by some of the MacFarlans, under circumstances of extreme atrocity. He was succeeded by his brother Sir Alexander, who was alive *anno* 1610. The then Laird of Luss must therefore have fled from the field of battle, leaving his vassals to be cut to pieces by their victorious antagonists. As to the Slaughter of the schoolboys, it is enough to state that this circumstance forms no point of any of the Dittays against those of the MacGregors who were tried for their share in this battle, although every criminal act which could possibly be adduced against each of them is carefully inserted in their Indictments. Such an atrocious fact could not have escaped the notice of all his Majesty's Advocates, for such a length of time—and there was no lack of informers. It is thought that this massacre is alluded to in the Records of the Privy Council, Jan. 5, 1609, where it is stated, that 'Allan Oig M^cIntnach, in Glenco,' when aiding the Clan-Gregor at Glenfrune, 'with his awne hand, murdered, without pity, the number of forty poor persons, who were naked and without armour.'

According to the Editor's usual plan, some passages from contemporary MSS. are appended, in illustration of the facts.]

¹ So called, probably, from their education being conducted in the Collegiate Church there, or under the auspices of the Clergy of that establishment, by virtue of some charitable endowment.

Jan. 20.—ALLASTER M'GREGOUR of Glenstra, Patrik Aldoche M'gregour, Williame M'neill his seruand, Duncan Pudrache¹ M'gregour, and Allaster M'gregour M'kean.

Dilatit, accusit and persewit, at the instance of Sir Thomas Hammiltoun of Monkland, knyght, aduocat to our fouerane lord, &c. off the crymes following : FORSAMEKILL as thay and ilkane of thame, accompaneit with vmq^{le} Johnne Dow, brother to the said Allaister M'gregour of Glenstra, and vtheris thair kin, freindis, and of thair counfall, haifing concludit the distructione of Alexander Colquhoun of Lufe, his kyn, freindis and alya, and the haill surname of the Balquhannanis, and to herrie² thair landis ; thay convenit to thameselfis the Clanhamrone,³ the Clananverich,⁴ and dyuerse vtheris brokin men and soirneris,⁵ to the number of foure hundreth men, or thairby, all bodin in feir of weir, with hagbuttis, pistolettis, murrionis, mailzie-coittis, pow-aixes,⁶ tua-handit-swoirdis, bowis, darloches, and vtheris wappones, *invasiue*, incontre the tennour of the Actis of Parliament : And, for the performance of thair wicked conclusioun, vpone the sevint day of Februare lastbypast, come fordward, in arrayit battell, to the Landis of Glenfrwne, pertening to the Laird of Lufe ; quhair the said Laird of Lufe, accompaneit with certane of his freindis, war convenit, be vertew of our fouerane lordis Commiffioun, to resist the saidis persones crewall interpryses ; and thair set vpone him, his kyn and freindis, and crewallie invaidit thame for thair slauchteris, schamefullie, crewallie and barbaruslie mordreift and slew Peter Naper of Kilmahew ; Johnne Buchannane of Buchlyvie ; Tobias Smallet, bailzie of Dumbarten ; Daid Fallefdaill, burges thair ; Thomas and James Fallafdaillis, his sones ; Walter Colquhoun of Barnehill ; Johnne Colquhoun, fear thairof ; Adam and Johnne⁷ Colquhones, sones to the Laird of Campstradden ; Johnne Colquhoun of Dalmure, and dyuerse vtheris persones, our fouerane lordis leigis, to the number of sevin scoir personis or thairby ; the maist pairt of thame being tane captiues be the saidis M'gregouris befor thai pat violent handis in thame, and crewallie slew thame : And treffonabillie tuik Williame Sempill and dyuerse vtheris, our fouerane lordis frie legis, and convoyit thame away captiue with thame, and be way of maisterfull Stouthreif, staw, rest and away-tuik sax hundreth ky and oxin, aucht hundreth scheip and gait, fourtene scoir of horse and meiris, with the haill pleniffing, guidis and geir, aff the fourfcoir pund land of Lufe ; and at the samyn tyme, treffonabillie raisit ffyre in the houffis and barne-3airdis thairof, brunt, waistit and distroyit the samyn, with the coirnis being thairin. And the foirsaidis persones and ilk ane of thame ar airt and pairt

¹ Of the country of Balquhidder.

² Spoil, plunder and devastate.

³ Clan Cameron.

⁴ Quere, the Clan Ian Averiche (Abroch), viz. the MacDonalds of Glencoe ?

⁵ Sorners, persons

who violently took free quarters, and committed acts of violence, having no fixed home.

⁶ Morions,

coats of mail, poll-axes.

⁷ See Note, Vol. II. p. 426.

of the faidis crewall, horrible and treffonabill crymes; the lyk quhair of was nevir committit within this realme: Committing thairby manifest Treffone, in hie and manifest contempt of our fouerane lord, his hienes auctorite and lawis.

ASSISA.

Sir Thomas Stewart of Garnetullie, Johnne Blair younger of that Ilk, Thomas Fallafdaill burges of Colene Campbell younger of Johnne Grahame of Knokdoliane, Dumbartene, Glennorchie, Moyfes Wallace burges of Ed^r, Johnne¹ Herring of Lethindie, Alexander Menzeis of Weyme, Sir Robert Creychtoun of Clwny, Williame Stewart, Capitane of Robert Robertfoun of Strowane, kny^t, Dumbartene, J^{no} Naper fear of Merchinstoun, Robert Robertfoun of Faskeilzie, Harie Drummond of Blair, Johnne Blair elder of that Ilk.

For verificatioun quhair of, the said Sir Thomas Hammiltoun of Monkland, aduocat, producet the faidis perfonis Depositiones and Confessiones, maid be thame in presens of dyuerse lordis of his hienes Secreit Counfall and Seffioun, subscryuit with thair handis.—The Aduocat askit instrumentis, (1.) Of the fweiring of the Assyse, and protestit for Wilfull Errour aganis thame, in cais thay acquit. (2.) Of the fweiring of the Dittay be the Laird of Lufe. (3.) Of the productioun of the pannellis Depositiones to the Assyse.

VERDICT. The Assyse, all in ane voce, be the mouth of Johnne Blair, elder of that Ilk, fand, pronuncet and declairit the faidis Allaister M'Gregour of Glenstra, &c. to be fylet, culpable and convict of the crymes aboue specifeit.

SENTENCE. And thairfoir, the Justice-depute, finding the faidis crymes to be treffonabill, be the mouth of James Henderfoun, dempstar of Court, Ordanit the faidis perfonis to be tane to the mercat-croce of Edinburgh, and thair to be hangit vpone ane gibbet quhill thay be deid; and thairefter thair heidis, legis, airmes and remanent pairtis of thair bodeis to be quarterit and put vpone publict places, and thair haill landis, heritageis, annuelrentis, takis, fteidingis, rowmes, possessiones, coirnes, cattell, guidis, geir and fowmes of money pertening to thame, to be fforfaltit, escheit and inbrocht to our fouerane lordis vse, as convict of the faidis treffonabill crymes.

DOCUMENTS *illustrative of* 'THE FIELD OF THE LENNOX,' *or* 'CONFLICT OF GLENFRUNE,' *and of the Proceedings against* THE LAIRD OF MACGREGOR *and his* CLAN.

(I.) EXTRACT from *Calderwood's MS. Church History, Advocates' Library*, (Vol. V. p. 677.)

UPON the eight of Februar, a great company of forners and brocken Highland men of the CLANE of MACKGRIGORE, the number of 400 men, came down to Lennox, to reave and spoyle. The people of the country conueened to make impediment. There were flaine of the country people, specially of the surname of COLQUHOUN, to the number of fourscore persons or therby; of which number were landed men of good rank.² The Laird of Luce himself, Chief of the Colquhouns, escaped narrowly.

¹ In another place called *David*.

² The matter is thus noticed by Birrel and Fleming. 'THE 9 of Februar (1603,) the Laird of Mackgrigour, with four hunder of his name and factioun, enterit in the Lennox, quhair he maid spuillzie and slauchter, to the nwmer of 60 honest men, besyid wemen and bearnis. He spairit nane quhair he come.'—*Birrel's Diary*. ('Apr. 9,) Proclamatioun sumonding all the Mc'Gregouris to compere and wnderly the law for the slauchter of the Laird of Luss, and the men of Dumbartane.'—*Fleming's MS. Chronicle*.

They carried away a thousand head of cattell, beside other infight and plenishing. It was reported, that that was done at the instigation of the Duke of Lennox his lady, seeking the wrack of the Laird of Luce, who held of the King, and not of the Duke !

(II.) EXTRACT from *MS. History of Scotland, Anon. Advocates' Library*, (A. 4. 35.)

Now, on the secund day of October (1603), THE LAIRD OF ARKINLES takis in hand to THE ERLL OF ARGYLL, to tak THE LAIRD OF MACGREGOUR ; and callis him to ane bankatt¹ in his hous, quhilk hous stuid within ane Loche ; and thair takis him prissoner, to fend him to Argyll. And putting him in ane boitt, with fywe menne with him, by² thame that rowit the boitt ; he, feing him selff betreisfit, gettis his handis lowse ; and striking him our burd that was narrest him, he lowpis in the watter, and out-fowmis³ to the land. And so escheappis wntene,⁴ for the presentt. Now the Erll Argyll, perseaffing that he wes eschapitt, he fendis to him, desyring him to cum to him, that he mycht confer with him, wnder promeis to lett him gang frie, gif thay culd nocht agrie. Wpoun the quhilk, the Laird McGregour come to him ; and, at his cuming, was weill reffaut be the Erll ; quha schew him, that he was commandit be the King to bring him in ; bot he had no doubt bot his Majefty wald, at his requeist, pardoun his offence ; and he fuld, with all diligenfe, fend tua Gentill menne to Ingland with him, and fuld with all diligenfe follow him selff. Wpoun the quhilk fair promiseis he was content ; and come with the Erll of Argyll to Edinburgh ; quhair, on the 10 day, he was be the Gaird conwoyt to Berwick, within Inglis grund, and fyne brocht back to Edinburgh. And on the 20 day was hangitt at the Corfe, with tenne of his kin and freindis hangit with him ; to the gritt discredeit of the Erll Argyll, quha wes the doare of the famin.⁵

(III.) EXTRACT from *Robert Birrel's Diary, MS., Advocates' Library*, (p. 138.)

THE 2 of October (1603), ALLESTER MCGREGOUR of Glainstre tane be the Laird of Arkyndles, bot escapit againe ; bot efter, taken be the Earle of Argyll the 4 of Januar ; and brocht to Edinburghe the 9 of Januar 1604, with 18 mae of his freindis, McGregouris. He wes convoyit to Bervick be the Gaird, conforme to the Earlis promese ; for he promesit to put him out of Scottis grund. Swa he keipit ane Hieland-manis promes ; in respect he sent the Gaird to convoy him out of Scottis grund : Bot thai wer not directit to pairt with him, bot to fetch him bak agane ! The 18 of Januar, at evine, he come agane to Edinburghe ; and vpone the 20 day, he wes hangit at the Croce, and ij (*eleven*) of hes freindis and name, upone ane gallous : Himselff, being chieff, he wes hangit his awin hicht aboue the rest of hes freindis.

(IV.) EXTRACT from *Calderwood's MS. Church History*.

UPON the 18 of Januar, MAKGREGORE was conveyed be the guard who attended upon the Counsell to Berwick, because Argyle promised to him, when he rendered himself, that he should be caried to Ingland : But a post was appointed to meet him to caus bring them back againe, which was done ! Immediatly, upon the 20 of Januar, he and fundrie of his Clane were hanged in Edinburgh. Sevine of thair number came in, long before, as pledges for performance of certaine conditions, which were to be filled by their chief ; but they were hanged with the rest, without the knowledge of ane Affyfe. They were young men, and reputed honest, for their own parts. The Laird of Makgrigore was hanged a pinne above the rest. A young man, called James Hope, beholding the execution, fell down, and power was taken from the half of his body. When he was caried to ane house, he cryed, that ' one of the Highland men had shott him with ane arrow ! ' He died upon the Sabbath-day after.

¹ Invites him to a banquet.

² Forbye, over and above, besides.

³ Swims out, outstrips the boat by his

swift swimming.

⁴ Untaken.

⁵ *Fleming*, in his *Chronicle*, (MS. Adv. Library,) thus records the event.

' The Laird of McGregour hangit at Edinburgh and xj of his onhappie kin. They hang all nicht on the gallous.'— This almost unexampled act of perfidy, on the part of Argyle, the King's Lieutenant, and the Justice-General of Scotland, gives a lamentable picture of the features of those unhappy times ; and it would appear that the government seemed to think it no discredit to take advantage of such an infamous breach of trust.

(V.) THE LAIRD OF MCGREGOURS DECLARATION, *producit the tyme of Conviction*.¹

I, ALLESTER MAGRIGOUR of Glenstra, CONFESSE heir before God, that I have bein persuadit, movit and intyfit, as I am now presentlie accusit and trublit for; alse, gif I had ufit counfall or command of the man that hes Intyfit me,² I wald have done and committit findrie heich Murthouris mair; ffor trewlie, sen I was first his Majesteis man,³ I culd never be at ane eise, by my Lord of Argylls falsheite and inventiones; for he causit M^cClaine and Glenchamrowne⁴ committit herschip and slauchter in my roum of Rennoche, the quhilk causit my pure men thereafter to bege and steill: Also, thereafter, he moweit my brother and sum of my freindis to commit baith herschip and slauchter upone the Laird of Lufs: Also, he persuadit myselve, with message, to weir⁵ aganis the Laird of Boquhanene, quhilk I did refuse; for the quhilk I was contenowalie boistit⁶ that he sould be my unfreind; and quhen I did refuse his desire in that point, then he intyfit me with uther messingeris, as be the Laird of M^cknachtane and utheris of my freindis, to weir and trouble the Laird of Lufs; quhilk I behuffit to do for his fals boutgaittis:⁷ Then, quhen he saw I was at ane strait, he cawfit me trow⁸ he was my guid freind; bot I did persave that he was flaw⁹ therin: Then I made my moyan¹⁰ to pleis his Majestie and Lords of Counfall, baith of service and obedience, to puneisfche faltouris and to saif innozent men;¹¹ and quhen Argyll was maid foresein¹² thereof, he intyfit me to stay and start fra thay conditionis, causing me to understand, that I was disflavit; bot with fair wordis, to put me in ane snair, that he mycht gett the lands of Kintyre in feyell¹³ fra his Majestie, begane to putt at me and my kin:¹⁴ The quhilk Argyll inventit, maist schamfullie, and persuadit the Laird of Ardkinlafs to disflave me, quha was the man I did maist trest into; bot God did releif me in the mean tyme to libertie, maist narrowlie.¹⁵ Neuertheless, Argyll maid the oppin brutt,¹⁶ that Ardkinlafs did all that falsheid by¹⁷ his knowlege; quhilk he did intyfe me, with oft and findrie messages, that he wald mak my peace and saif my lyfe and landis, only to puneis certane faltouris of my kin, and my innozent freindis¹⁸ to renunce thair surname, and to leif peaceable. Vpone the quhilk conditionis, he was suorne be ane ayth to his freindis; and they suorne to me; and als, I haif his warrand and handvrytt therevpon. The quhilk promiseis, gif they be honestlie keipit, I let God be Juge! And at our meting, in oure awin chalmer, he vas suorne to me, in witnes of his awin freind. Attour,¹⁹ I Confess, befor God, that he did all his craftie diligence to intyfe me to slay and destroy the Laird Ardinkaippill, M^ckallay,²⁰ for ony ganes kyndness or freindschip that he mycht do or gif me.²¹ The quhilk I did refus, in respect of my faithfull promiseis maid to M^ckallay of-befor.²² Also, he did all the diligence he culd, to mowe me to slay the Laird of Ardkyndlas, in lyk

¹ THE Original of the very interesting and important Paper now given, is preserved in the General Register House, and is in the hand of the then Clerk of Secret Council, James Primrose. It is marked as—'PRESENTIT BE MR WILLIAME HAIRT,' (of Levilands) as an article of evidence of his guilt, at his Trial. It will be recollected that this person officiated as Justice Depute on the occasion. Glenstray had surrendered to Argyll, on condition of his being permitted to go to England; by which the former meant that he should visit the English Court, and have, if possible, access to the King. It was obviously Argyll's policy to prevent this; but, that he might fulfill his promise, he sent him, under a strong escort of troops, to beyond the river Tweed, at Berwick, where the soldiers, wheeling to the right about, made MacGregor retrace his steps. He was two days only in Edinburgh, after his return from England, when he was executed.—See *Sir James Balfour's Annals*, and Nos. II. and IV. of these illustrative documents. ² The Earl of Argyll, King's Lieutenant in the Bounds of the Clan-Gregor, since July, 1596.—*Records of Secret Council*.

³ He had taken the usual oath to be his Majesty's 'household-man,' 27th July 1596, as appears from the Record of Secret Council. ⁴ Clan-Cameron. ⁵ Wage war. ⁶ Threatened. ⁷ Deceitful courses; literally, 'round-about ways.'

⁸ Believe. ⁹ Slow, slack. ¹⁰ Did my endeavour, *moyen*. ¹¹ This point is illustrated by an *Original Paper*, preserved in the General Register House, of date Jul. 24, 1599. ¹² Advertised, informed. ¹³ Fee, feufarm.

¹⁴ This refers to the Royal promise of reward to Argyll, after Feb. 7, 1603, for apprehending Glenstray; which reward, as he had earned it, he afterwards received; and it was confirmed to him by the Parliament, 1607. ¹⁵ This refers to that escape from Campbell of Ardkinglass, hereditary Sheriff of Argyllshire, mentioned by *Sir James Balfour* and by *Birrel*. ¹⁶ Report. French, *bruit*. ¹⁷ Without, contrary to his knowledge.

¹⁸ Such of them as were innocent of the crimes charged against the Clan generally. ¹⁹ Moreover. ²⁰ Awlay MacAwlay. ²¹ In the *Lord Treasurer's Books* of Scotland. Nov. 1602, is the following entry: 'Item, to Patrik McOmeis, messenger, passand of Edinburghe, w^t Lettres to charge Ar^d Earle of Argyle to compeir personallie befor the Counsall, the xvj day of December nixt, to ansuer to sic thingis as salbe in-

quirrit at him, tuiching his lying at await for the Laird of Ardkinapill, vpon set purpois to have slane him, xvj li.' ²² GLENSTRAY and MACAWLAY had entered into a Bond of Clanship, May 27, 1591, in which the latter owns his

maner ; bot I neuer grantit therto :¹ Throw the quhilk he did invy me grettumly.² And now, feing God and man feis it is greidenes of warldlie geir quhilk caufis him to putt at me and my kin, and not the weill of the realme, nor to pacifie the famyn, nor to his Majestie honour, bot to putt down innocent men, to cause pure bairnes and infanttis bege, and pure wemen to perisch for hunger, quhen they ar hereit of thair geir : The quhilk, I pray God, that thais faltis lycht not upon his Majestie heirefter, nor upon his succession. Quherfor, I wald beseik God that his Majestie knew the weratie, that at this hour I wald be content to tak Baneifment, with all my kin that was at the Laird of Luffis slauchter, and all utheris of thame that ony falt can be laid to thair charge : And his Majestie, of his mercie, to lat pure innocent men and young bairnes pas to libertie, and lerne to leiff as innocent men : The quhilk I wald fulfill, but ony kynd of fail ;³ quhilk wald be mair to the will of God and his Majestie honour, nor⁴ the greidie, cruell forme that is devyfit, only for leuf of geir, haueing nether respect to God nor honestie !

Field of Glenfrune — Murder — Fire-raising, &c.

Feb. 17.—JOHNNE DOW M^cEWIN M^cGREGOUR, Patrik M^cilvarnoch, his man, Duncan M^cenham M^cgregour, Duncan M^cAllester Vrek, Allester M^cEwin V^ccondochie, Johnne M^cean V^cgregour, Ewin M^ccondochie clerich, Johnne Ammonoche M^cgregour, Duncan Beg M^cgregour V^ccoull chere, Gregour M^cNicoll in Dalveich, Johnne Dow M^ccondochie V^cewin.

Dilatit of certane crymes of Murthour, Thift, Soirning ; and for being at the ffeild of Glenfrune, in companie with vmq^{le} Allaister M^cgregour of Glenstra,⁵ his kyn and freindis ; and of the Slauchteris, ffyre-raising, Reif and Herschippis committit in the moneth of ffebruare 1603 yeiris, aganis the Laird of Lufe, his freindis and pairtakeris, viz. (1.) *Johnne Dow M^cewin M^cgregour*, for his intercowmoning with vmq^{le} Allaister M^cgregour of Glenstra, vmq^{le} Patrik Aulauch M^cgregour and vtheris thair complices, quha war at the treffonabill burning of Robert Watterfones barne of Kallechoit, and at the steilling of the Laird of Merchinstounes oxin ; committit in September last. ITEM, of airt and pairt of the thiftious steilling, furth of Andro Allanes house in Kipine, of fyve ky ; committit in October last. ITEM, for airt and pairt of the slauchter of vmq^{le} Johnne Drummond in Drony of Cowgask ; committit in August last. ITEM, for airt and pairt of the steilling of ane milk 3ow⁶ fra Patrik M^cboricht, furth of his duelling-hous of Glenmawak ; committit in September last. AND ficlyk, of cowmone Thift and cowmone reffet of thift.—(2.) *Patrik M^cilvarnoch*, servand to the said Johnne Dow, of airt and pairt of the haill crymes aboue writtin ; as being in companie with his said maister thairat.—(3.) *Duncan M^cinham V^cgregour*, ffor airt and pairt of the thiftious steilling fra Eduard Reidochie of

being a Cadet of the House of the former, and promises to pay him 'THE CALP.'—*Paper in the General Register House.* This instrument had, as would seem, been discovered by the Government, and led to the suspicion, alluded to in a former part of this work (See May 17, 1603), that MacAulay had aided Glenstray in the feud of Glenfruin. MacAulay seems to have escaped death, by being under the protection of the Duke of Lennox, and forming one of his train or 'Tail,' in the King's journey to England, to take possession of the English Throne.

¹ Ardkinglass, as appears from the *Book of Taymouth*, was Glenstray's near kinsman.

mortal grudge at me.

³ Without failure or evasion.

⁴ Than.

⁵ See Jan. 20, 1604.

⁶ Ewe.

fyve horfe and meiris ; committit in the moneth of I^m.V^c. fourfcoir and fourtene yeiris. ITEM, of airt and pairt of the thiftious fteilling fra Allafter M^ccondochie Vic James Robiefone, in Callewin, of ten horfis and meiris ; committit in the moneth of yeiris.—(4.) *Duncane M^cAllafter Vrek* in Farne, ffor airt and pairt of the thiftious fteilling furth of the landis of Airliewicht of fourtie ky, pertening to the Laird of Bandrane ; committit ten yeir fyne or thairby. ITEM, for the thiftious fteilling furth of the Laird of Strowanes crandoche¹ of his haill inficht, worth I^m. lib.² ITEM, for airt and pairt of the flaughter of vmq^{le} Donald Dereif. ITEM, for airt and pairt of the thiftious fteilling furth of the landis of Downance in Menteith, of fourtie ky, tuelf horfis ; committit in the yeir of God I^m.V^c. fourfcoir aucht : And for intercowmoning with the Laird of M^cgregour : And for cowmone Thift and cowmone refset of thift.—(5.) *Ewin M^ccondochie Clerich*, ffor his treffonabill intercowmoning with the Laird of M^cgregour, and fchawing of fauour and fupplie to him : And for cowmone thift, and cowmone refsett of thift.—(6.) *Johnne Dow M^ccondochie V^cewin*, ffor treffonabill intercowmoning with vmq^{le} the Laird of M^cgregour, and geving him fupplie and conforte.—(7.) *Johnne Ammonache M^cgregour* in Kingart, ffor airt and pairt of the thiftious fteilling of fax fcheip furth of Schandballie ; committit aucht yeir fyne or thairby. ITEM, for cowmone Thift and cowmone refsett of thift.—(8.) *Allafter M^cewin V^ccondochie*, in Couldar, ffor airt and pairt of the heirfchip of the Downance in Menteith ; and of the flaughteris than committit ; and fpeciallie of the flaughter of vmq^{le} Andro Grahame.—(9.) *Gregour M^cneill* alias *Cowanache*, ffor airt and pairt of the crewall Murthour and Slaughter of vmq^{le} the ffidler M^ckillope, within his awin hous in Dalvey ; committit at Anderfmes,³ I^m. fax hundreth and tua yeiris. ITEM, ffor the thiftious refsetting and treffonabill intercowmoning (of vmq^{le} the Laird of M^cgregour ?) eftir he wes difcharget be proclamatioune.—(10.) *Johnne M^ckean V^cgregour*, in Glenogill vnder Tawie-barne, ffor the crewall Murthour, flaughter and drowning of M^ckillopis wyfe, that duellt in Glenartnay, being in company with vmq^{le} Patrik Aulach ; committit in harveft laft. ITEM, for refset of the brokin men of the M^cgregouris, within his duelling-hous, and treffonabill intercowmoning with thame, aganis his hienes Proclamatioun.—(11.) *Duncan Beg M^cgregour V^ccoull Chere*, ffor airt and pairt of the crewall Murthour and flaughter of fevin fcoir perfones flane at Glenfrwne ; and heirfchip than committit thairin, in the moneth of ffebruarye 1603. ITEM, for cowmoun thift and cowmoun refsett of thift : And for the treffonabill intercowmoning with vmq^{le} the Laird of M^cgregour, eftir he was difcharget be proclamatioune.

¹ Or *craudoche*, a Highland gentleman's dwelling-house, Andrew's-mass, the 30th day of November.

² £1000.

³ St Andrew's day,

ASSISA.

Mr Moreis Drummond of Cul- Mungo Buchannane in Tullie- Jacobi¹ Edmestoun of Newtoun,
 cherie, chewin, Daid Drummond in Drymmen,
 James Spreull ffear of Cowden, James Dennyftoun of Cowgrane, Johnne Naper of Kilmahew,
 Colene Campbell of Aberuchill, Thomas Fallafdaill in Ardoche, Johnne Muschet at the mylne of
 Mungo Lyndfay of Ballull, Daid Muschet of Orcheardheid, Tor,
 Robert Naper of Blakzairdis, Johnne Buchannane of Ibert, Harrie Mitchell in Darra.

The Aduocat askit instrumentis of the sweiring of the Assyse; of Johnne Dowis Declaratioun, that Patrik M^cilvarnoch his man hes bene with him this tua yeir bygane, and is pairtaker of all his factis. The Aduocat, for verifeing the poyntis of Dittay, producet the Kingis Proclamatioun, Actis of Secreit Counfall, contenit in the buik of Secreit Counfall producet, and askit instrumentis thairvpoun: And protestit for Wilfull Errour aganis the Assyse, in caise thai acquit.

VERDICT. The Assyis, be the mouth of Daid Drummond, chancellor, ffand, pronuncet and declairit the saidis persones to be ffylet, culpable and convict of the perticuler poyntis of Dittay aboue writtin.

SENTENCE. The Justice-depute decernit and adjudget the said John Dow, &c. to be tane to the mercait-croce of Edinburgh, and thair to be hangit vpoun ane gibbet quhill thai be deid; and all thair moveabill guidis to be escheit and inbrocht to our fouerane lordis vse, as convict of the saidis crymes.²

‘Field of Glenfrune’ — Slaughter of the Colquhouns, &c.

Mar. 1.—NEILL M^cGREGOUR in Meirie (Mewie,) Patrik Gair M^cgregour, Donald Roy M^cgregour, Duncane M^cgregour, Donald Graffiche M^cCadanich.

Dilatit, accuset and persewit for being in company with vmq^{le} Allaister M^cgregour of Glenftra and his complices, at the ffeild of Glenfrwne,³ and of airt and pairt of the slauchter of sevin scoir persones, being all freindis, fervandis, affisteris and pairtakeris with the Laird of Lufe at the said ffeild, and of the heirschipis thair committit be the said Laird of M^cgregour and his complices: And of the treffonabill raising of ffyre and burning of dyuerse houffis, within the boundis foirfaid; committit in the moneth of Februlare, the yeir of God I^m.Vj^c. and thre yeiris: And siclyk, for intercowmoning with the said Laird of M^cgregour and persones foirfaidis, his complices, that war at the said slauchter and heirschip, sen the committing thair of.—AND als, the said *Patrik Gair M^cgregour* being indyttit and accuset for the hounding out of his thre sones to the said ffeild, and murthouris and slauchteris than committit vpone the said Laird of Luffis freindis: And of airt and pairt, red, counfall, foirknowledge, assistance and ratihabitoun

¹ This person is so named in various places of the Record.

name of MacGregor hangit, quho had lain lang in the Tolbuith.—*Birrel*.

² ‘The 18th of Februar, 9 of the

³ See Jan. 20, 1604.

of the said murthouris and heirschippis : And siclyke, for the reffett and intercowmoning with the Laird of M^cgregour and his complices that war at Glenfrune, and reffetting of thame with the bludie hand, sen the tyme foirfaid of the said heirschip and slauchteris.

ASSISA.

Mungo Lyndfay of Ballull,	Constene Moirtoun,	Robert Buchannane in Kippen,
Johnne Buchannane, burges of	Hew Glen of Lynthillis,	Robert Buchannane Walterfoune,
Dumbarten,	Johnne Buntene of Ardoche,	Dougall M ^c farlen in Murnagane,
George Buchannane in Ladrifch,	Thomas Naper of Barriekynrayne,	Walter Blair of Fynnech,
Thomas Fallafdaille, burges of	Johnne Naper of Kilmahew,	Dauid Hadden (Haldene,) Tutour
Dumbarten,	Johnne Sempill of Foulwoid,	of Glennageis.

VERDICT. The said Assyse, all in ane voce, be the mouth of the said Robert Buchannane Walterfoune, ffand, pronuncet and declairit the saidis fyve perfones to be ffylet, culpable and convict of the haill crymes aboue specifreit.

SENTENCE. And thairfoir, the Justice-depute, be the mouth of Robert Scott, dempstar of Court, decernit and ordanit the saidis perfones to be tane to the gallouse of the Burrow-mure of Edinburghe, and thairupoune to be hangit quhill thay be deid ; and thair haill moveable guidis to be escheit and inbrocht to his hienes vse, as convict of the saidis crymes.

Theft — Reset of Laird of MacGregor — ‘Field of Glenfrune,’ &c.

Mar. 2.—MALCOLME M^cCOULL CLERICH (M^ccherich,) in Innerlochlarg ; Duncan M^cfadrik V^ccoull Chere, in Innerlochlarg, vnder the Laird of Tulliebardin ; Johnne M^ccoull Chere, in the Bray of Balquhiddel, and Neill M^cWilliamme V^cNeill.

Dilaitit of certane poyntis of Thift ; and for Intercowmoning with vmq^{le} the Laird of M^cgregour, sen the Raid of Glenfrune, viz. (1.) *Malcolme M^ccoull Cleriche* (*Cheriche*), ffor airt and pairt, and being on the grundis at the crewall Slauchter of vmq^{le} Hew Stewart, ferveand to my Lord Athole ; committit threttie yeir fyne, or thairby. ITEM, for airt and pairt of the slauchter of vmq^{le} Patrik M^cgregour, in Glenbokie ; committit in the moneth of September, the yeir of God I^m.V^c. threfcoir fextene yeiris. ITEM, for geving of counfall to vmq^{le} the Laird of Makgregour, his kyn and freindis, to pas fordward aganis the Laird of Lufe to Glenfrune ;¹ and for convoying² the said Laird of M^cgregour agaitwart³ to the fyd of Lochloun, afoir the ffeild : And for airt and pairt of the slauchteris and heirschipis committit at Glenfrune be the said Laird of M^cgregour and his complices, in the moneth of Februare 1603 yeiris. ITEM, for the treffonable Intercowmoning with the said Laird of M^cgregour, and Reffett of him and his freindis and pairtakeris that war at the ffeild of Glenfrune, and geving of thame herbrie, help and fupplie, in meit, drink and bedding, wittinglie and willinglie,

¹ See Jan. 20, 1604.

² Escorting.

³ On the way or *gait*.

at dyuerse tymes, sen thai war denuncet our fouerane lordis rebellis and declairit tratouris, and sen his Maiesteis Proclamatioune, inhibeiting all our fouerane lordis leigis to intercowmone, ressett or gif countenance or schaw fauour to the saidis rebellis.—(2.) *Duncan M^cfadrik V^ccoull cheir*, ffor airt and pairt of the Slauchter of the said vmq^{le} Patrik M^cgregour; committit in September 1576 yeiris. ITEM, for geving of counfall to the Laird of M^cgregour to pas forward to the ffeild of Glenfrune aganis the Laird of Luse, and convoying him to the fyde of Lochloun, agaitward, to the said ffeild. ITEM, for wilfull Intercowmoning and geving of counfall to the Laird of M^cgregour, and convening with him in dyuerse meittingis and conventiounes, had and keipit be him and his freindis, sen thai war denuncet his Maiesteis rebellis, for the Murthour, Slauchteris and heirschipis committit be thame at the said ffeild of Glenfrune, incontrair to his Maiesteis proclamatioune.—(3.) *Neill M^cWilliame V^cNeill*, ffor the tressonabill Intercowmoning with the Laird of M^cgregour, his kin and freindis that war at the murthour and heirschipis in Glenfrune, and ressett of thame within his hous, and geving meit and drink to thame wittinglie and willinglie, at dyuerse tymes sen thai war denuncet rebellis, &c.—(4.) AND siclyk, *Johnne M^ccoull Cheire*, ffor airt and pairt of the crewall Murthour and Burning of auchtene houshalderis of the Clanlawren,¹ thair wyves and bairnis; committit fourtie sax yeir fyne, or thairby. ITEM, off airt and pairt of the Slauchter of vmq^{le} Hew Stewart, ferveand to my Lord of Athole; committit threttie yeir fyne, or thairby: And in taking pairt with the Clan-Gregouris at the Heirschip, committit the tyme foirsaid, aganis the Tutour of Bofrak. ITEM, for Intercowmoning with the Laird of M^cgregour and his complices that war at the ffeild of Glenfrune, sen thair denunciatioune; and geving of conforte, supple and freindschip to thame, contrair the tennour of the Proclamatioune. ITEM, for cowmone Thift, cowmone ressett of thift, outputing and inputing of thift fra land to land, fra cuntrey (to cuntrey), baith of auld and new.

VERDICT. The Affise, be the mouth of Mungo Lyndsay of Ballull, chancellor, ffand, pronuncet and declairit the saidis Malcolme, Duncan and Neill to be ffylit, culpable and convict of the haill crymes and poyntis of Dittay aboue writtin: And the said Johnne M^ccoull Cheire to be Clene, innocent and acquit of the saidis crymes.

SENTENCE. And thairfoir the said Justice-depute, be the mouth of Robert Scott, dempstar of Court, decernit and ordanit the saidis Malcolme M^ccoull and Duncane M^cFadrik to be tane to the gibbet at the mercat croce of Edinburghe, and thair to be hangit quhill thay be deid; and all thair moveabill guidis to be escheit and inbrocht to his Maiesteis vse, as convict of the saidis crymes.

¹ The M^cLawrens, or Maclarens, a Clan residing in Balquhidder.

Slaughter — Fire-raising.

Mar. 2.—DAVID ARMESTRANG, sone to *Sandeis Niniane*.

Dilaitit, accuset and perfewit of airt and pairt of the Slauchter of vmq^{le} Johnne Johnnestoun, Persone of Tunnergarth. ITEM, for airt and pairt of the Slauchter of Robert Currie, servand to the Baillie of the Watter of Leyth, and thre mafones with him, at the Oisleris-hous in the Lwn : And for the treffonabill Raifing of ffyre, and Burning of the said Oisleris-hous.

VERDICT and SENTENCE. The same Affise, as in the above case, pronounced a similar Verdict of Guilty against Armstrang, who was hanged along with M^ccoull and M^cfadrik.¹

Masterful Stouthreif — Theft, &c.

Mar. 10.—THOMAS HARDIE, sone to James Hardie of Bounmylnerig.

Dilatit of the crymes following, viz. Forfamekill as he, with his complices, laitlie, in the moneth of Apryle lastbypast, vnder sylence and cloud of nycht, betuix nyne and ten houres att ewin, vmbesett the hie way and passage, betuix Leith and Edinburghe, to Jaques De la Berge, ane Fleming and strangear, he being rydand, in peceabill maner, vp fra Leith to the burgh of Edinburghe ; and thair sett vpon him, tuik his horse be the heid, and caufit him lycht fra his horse, and thaireftir rypeit him ; and thifteoullie, be way of maisterfull stouthreif, ftall, rest and away-tuik fra the said Jaques De la Berge twa pursis, ane mair and ane vther lefs, with ane grit quantitie of gold and siluer contenit thairin, being for the maist pairt Inglis money : togidder with ane gold ryng, sett with ane dyamond, with ane broun naig quhairon he raid : And he wes airt and pairt of the thifteous steilling, reiffing, ressetting and away-taking thairof. ITEM, ffor the thifteous steilling, conceiling, ressetting and away-taking of ane blak horse fra James Libbertoun, in Nethir Libbertoun ; quhilk horse he fauld thaireftir in Bow-castell, in Ingland.

VERDICT. The Affise, be the mouth of Cokburne of Choullie, chancellor, fstand, pronunceit and declarit him to be ffylit, culpabill and convict of the poyntis of Dittay, &c.

SENTENCE. To be tane to ane gybbet, standand beneath the mercat croce of Edinburghe, and thairvpoun to be hangit quhill he be deid ; and all his moveabill guidis, takis, steidingis, &c. to be escheit, &c.

Horse, Cattle, and Sheep-stealing.

Mar. 10.—WALTER DAUIDSOUN, callit of Callelie.

Convicted by the same Affise, and ordained to be hanged along with Hardie,

¹ *Birrel* remarks, ' 7 MacGregors and Armstrangs wer hangit at the croffe.'

for stealing of horses, oxen and sheep, &c. from lands of Pittalisheuch, belonging to Dickfoun of Buchtrig, Sir Johnne Cokburne of Ormiston, kny^t, Justice clerk,¹ &c.

[*Mr Williame Borthuik, Justice-Depute.*]

Slaughter.

Mar. 15.—HECTOR TRUMBILL of Stanyledge; Hector Trumbill of Barnehillis; George Trumbill, his brother; and Gawin Trumbill, thair father-brother.

Dilatit for airt and pairt of the Slauchter of vmq^{le} Williame, James, Robert, Johnne, Andro and Thomas Grameflawis, fones to vmq^{le} Johnne Grameflaw of Lytill Newtoun.

Mr Robert Home of Carolfyde, Hector Trumbill of Belfis and James Douglas of Caveris, as cautioners, amerciaded for non-entry of the pannels, viz. the two first in 400 merks; and Douglas of Cavers, along with Trumbell of Barnehillis, in 1000 merks, 400 merks, and 400 merks. The pannels ordained to be denounced rebels, &c.

Cattle-stealing — Stouthreif, &c.

Mar. 20.—JOHNNE RENTOUN of the Scheillis.

Dilaitit of airt and pairt of the Steilling of ffourtene nolt fra James Burnet, &c. LYK AS, in the moneth of September, the yeir of God I^m.V^c. fourfcoir aucht yeiris, or thairby, vmbeset the hie way and passage to certane cadgeris at the Brokin-mofs, quha war dryveand thre or four pakis of Inglis clayth, pertening to certane merchandis, inhabitantis of the burgh of Edinburghe, and thair, be way of Maisterfull stouthreif, ftaw, rest and away-tuik fra the saidis cadgeris foure pakis of Inglis clayth, and speciallie ane pak of Inglis clayth, pertening to Gray, mercheand burges of Edinburghe, estimat worth the fowme of Thre thousand merkis, money of this realme, &c. &c.

VERDICT. The Affyse, be the mouth of Mr James Home of Goddiscroft, all in ane voce, ffand the said Johnne to be Cleane, innocent and acquit of the haill crymes.

Willfully hearing Mass celebrated.

May 9.—ARCHIBALD MACBREK, burges of Perth.

Dilatit, accuset and persewit, be Mr Robert Lyntoun, Aduocat substitute to Sir Thomas Hammiltoun, &c. for the crymes contenit in the DITTAY following.

ARCHIBALD M^cBREK, burges of Perth, Ye ar indyttit and accuset; fforfamekill as it is statute and ordanit, be our fouerane lordis Actis of Parliament, and speciallie, be ane Act of his hienes fourtene

¹ 'The 10 of Marche, twa notabill thieffes hangit at the crosse, ane Thomas Hardie, and ane Davidson.'—*Birrel*.

Parliament, haldin and begwn at Edinburghe vpone the aucht day of Junij, the yeir of God I^m.V^c. fourfcoir fourtene yeiris, that in all tymes cuming, all wilfull heiraris of Mefs and conceillaris of the fame fall be execute to the death, and thair haill guidis and geir efcheitit to his hienes vfe, as thay fall be fund giltie and convict thairof, or declairit fugitive for the fame, befor the Justice or his deputtis, or the lordis of his Maieftis Previe Counfall, as the faid Act at lenth beris : And trew it is, that Mr Robert Abercumbie, ane Jefuite and Preift, in the moneth of Marche laftbypaft, in the oulk (*week*) befor Palme Sondag laft, being reffet and ludget, with his man, in the faid Archibalds duelling hous in Perth, ane haill nicht ; the faid Mr Robert maid the faid Archibald foirfene, that he was to fay ane Mefs vpone the morne, airtie in the moirning, in George Bosuallis hous in Perth, quhair my lord Inchafferay and his famelie war ludget, and perfuaidit the faid Archibald to cum and heir the famyn : Lykas, vpone the morne, airtie in the moirning, in ane of the dayis of the oulk befor Palme Sondag, the faid Mr Robert paf first over to the faid George Bosuallis houfe ; and the faid Archibald followit him, and paf vp to the vpper Eifter chalmer of the faid ludgeing, quhair the faid Mr Robert Abircumbie faid ane Mefs : And ye, the faid Archibald, wilfullie and willinglie (being of the trew Religioun befor your away-paffing furth of this cuntrie, and in your abfence furth of the famyn, made defectioun thairfra to Romifch Religioune), hard the faid Mefs, and reffaut the Communioun after the Romane maner ; and conceillit the faying and heiring thairof, quhill ye was challanget. For the quhilk wilfull heiring of the faid Mefs and conceilling thairof, ye, the faid Archibald, being convict of the famyn, befor the Justice-generall and his deputis, be Act of Parliament, ye aucht to be pwneifchet to the daith ; and your haill moveabill guidis and geir efcheit to our fouerane lordis vfe : To the taikin,¹ ye haif confeffit the haill premisses to be of veritie, be your Depositiones, fubferyuit with your hand ; quhilk ye can nocht deny.

VERDICT. The Affyfe, be the mouth of James Nicolfoune, tailzeour in Edinburghe, chancellor, ffand, pronuncet and declairit the faid Archibald to be ffylet, culpabill and convict of the Wilfull heiring of Mefs, wittinglie and willinglie, but² compulfion ; and conceilling of the fame, quhill he was challanget ; accoirding to the faid Dittay, and accoirding to his Confessioun maid thairof in judgement, and Depositiones producet, fubferyuit with his hand.³

[*Mr Williame Hairt, Justice-Depute.*]

Slaughter—Horse and Cattle-stealing, &c.

May 15.—JOHNNE BATIESOUN, alias *Jok of the Scoir* ; Archibald Batiefoun, alias *Prikit vp Archie*, brother to the faid Johnne ; and Adie Batiefoun, brother to the faid Johnne and Archie.

JOK OF THE SCOIR, dilatit, ffor airt and pairt of the flauchter of vmq^{le} Williame Tuedie of Olipher and thiftious fteilling of ane grit number of ky, oxin and naigis furth of Tueddell ; committit threttie yeir fyne, or thairby. ITEM, ffor airt and pairt of the fteilling of foure naigis furth of Sandiehillis ; and of threfcoir nolt furth of Langvrd. ITEM, ffor airt and pairt of the fteilling of four ky and tua horfe, with certane inficht, furth of Bankend in Craufurd-Johnne, pertening to Thomas Weir ; committit tua yeir fyne. ITEM, ffor airt and pairt of the fteilling fra William M^ccalla, in Glenbaithe, of ane meir, and certane inficht

¹ In evidence, or testimony whereof.

² Without.

³ The sentence is not recorded.

of his house; and hurting and wounding of the said Williame. ITEM, for airt and pairt of the steilling of tua naigis fra ane fervand of Sir Johnne Keris, furth of the Spittellis. ITEM, for airt and pairt of the steilling of fyftene scoir of ky and oxin, with ane grit number of vther guidis, furth of my Lord gesteris boundis; committit a xvij yeir fyne, or thairby. ITEM, for steilling and away-taking of tua naigis fra Johnne Symfoun, with his cloik, quhinger and purse, quhairin thair was xxx s. ITEM, for cowmoun thift and cowmoun reffet of thift. —PRIKIT VP ARCHIE, dilaitit of airt and pairt of the thiftious steilling of fourtie nolt, furth of the Schereff of Airis boundis; and hurting and wounding of ane fervand of the Schereffis, in redding thairof. ITEM, for airt of the steilling of tuentie naigis furth of Sandiehillis fra the puir cadgeris;¹ committit a thre yeir fyne: And for airt and pairt of the Slauchter of ane of the puir cadgeris, at that samyn tyme. ITEM, for airt and pairt of the steilling of sax nolt furth of the Nethir Snab; committit aucht yeir fyne, or thairby. ITEM, for airt and pairt of the steilling of ane grit number of scheip furth of Brigend, pertening to the Laird of Fawfydes fervandis. ITEM, for airt and pairt of the steilling of xxxij oxin furth of Lammermure, pertening to the Laird of Innerleith. ITEM, for cowmoun thift and cowmoun reffet of thift, &c.—ADIE BATTIESOUN, dilaitit for airt and pairt of the Slauchter of vmq^{le} Johnne Naper, in company of the said Johnne his brother; and steilling of ane grit number of ky and oxin furth of Clydheid. ITEM, for airt and pairt of the steilling of the said Williame M^ccall his meir, and haill inficht of his house; and hurting of the said Williame. ITEM, for airt and pairt of the steilling of ten scheip furth of the Hill-hous of Clyde, fra Gilbert Johnnestones men; committit a yeir fyne. ITEM, for the steiling of tua naigis a foure yeir fyne, furth of Sandiehillis, fra certane puir cadgeris. ITEM, for cowmoun thift, cowmone reffet of thift, outputing and inputing of thift, fra land to land, fra cuntrey to cuntrey, baith of auld and of new.

VERDICT. For the quhilkis crymes, the saidis thre persones wer put to the knowlege of ane Assyse, and thai all, in ane voce, be the mouth of Donald Thornetoun, burges of Edinburghe, chancellor, ffand, pronuncet and declairit the saidis Johnne, Archie and Adie Batiesones to be ffylit, culpabill and convict of the crymes aboue specifeit, accoirding to thair Depositiones, gevin vp be thame thairof, and Confessioun of the samyn in Judgement.

SENTENCE. To be tane to the mercait croce of Edinburghe, and thair to be hangit on ane gibbet, quhill thai be deid; and thair haill moveabill guidis to be escheit and inbrocht, &c.

¹ The Carriers, who, for hire, transported goods on pack-saddles, &c. By means of this useful class, most part of the merchandise and heavy carriages were conveyed to all parts of the kingdom. They usually travelled in companies, for mutual protection; but were often overpowered, and in many cases slain, in faithfully defending the property committed to their charge.

[*Mr Williame Borthuik, Justice-Depute.*]

Slaughter — Bearing and Wearing of Pistolets.

May 16.—HECTOUR TRUMBILL of Lylslie (Lilliesleaf.)

Dilaitit for airt and pairt of the Slauchter of vmq^{le} Thomas Ker (of Craling), brother to the Laird of Farnihirst, and George Glaidner, his servand : And for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of Pistolettis : And vtheris crymes contenit in our fouerane lordis letteris direct thairvpoun.

Hectour Trumbill of Belfis vnlawit and amerciat, as cautioner, for nocht entrie of the faid Hectour, in the panes contenit in the Actis of Parliament ; and the pannel adiudget to be denuncet rebell and put to the horne, and all his moveabill guidis to be escheit, as fugitiue fra his hienes lawis for the faidis crymis.

Slaughter.

May 18.—WILLIAME STEWART, brother to my Lord Vchiltrie, Williame Stewart, sone to Sir Williame Stewart of Carftairis, kn^t.

Dilaitit for the Slauchter of vmq^{le} Robert Cathcart, wryter.¹

Maufe Aikman, relict of the faid vmq^{le} Robert, producet our fouerane lordis letteris, deulie execute ; and offerit hir selff reddie to persew.

THE JUSTICE continewis to the thrid day of the nixt Justice-air of Air, quhair thay duell, or soner vpon xv dayis wairning. Andro Lord Stewart of Vchiltrie and James Stewart of Lekprevik, become pleges and fouerties, coniunctlie and feuerallie. Johnne Grahame of Knokdoliane relieved of his caution.

[*Mr Williame Hairt, Justice-Depute.*]

Slaughter.

Jun. 6.—WILLIAME MYDDILMEST of Lilslie-Chappell and James Myddilmest, his brother-germane.

Dilaitit for airt and pairt of the Slauchter of Thomas Ker of Craling, &c.²

Thomas Trumbill of Mynto, as cautioner, vnlawit in the pane of ane thousand merkis and four hundreth merkis for nocht entrie of the faidis pannels. The Justice ordainit thame to be denuncet rebell and put to the horne, and all thair moveabill guidis to be escheit, &c.

Murder of the Laird of Warristoun — Punishment of breaking on the Wheel.

[FEW Cases of MURDER have excited so lively an interest in the public mind, at the time of their occurrence, as that of THE LAIRD OF WARRISTON. He was a person of considerable note in Edinburgh, and nearly connected with the ancient family of Kincaid of that Ilk in Stirlingshire, then in

¹ See Mar. 4, 1600.

² See May 16, 1604.

possession of extensive estates in the counties of Edinburgh, Linlithgow, &c. JEAN LIVINGSTOUN, the young and beautiful murdress, was likewise a person of considerable rank, being a daughter of John Livingstoune of Dunipace, and related to many of the first Families in Scotland.

The property of Warriston being situated about a mile from the City of Edinburgh, news of the Murder instantly reached the proper authorities. Officers were dispatched, who succeeded in taking, 'red-hand,' THE LADY WARRISTOUN, 'the fause nourife,' as usual, the prime mover of this deed of darkness and treachery, and her two 'hyred women.' Weir alone, the actual perpetrator, escaped for a time, having refused to take the Lady along with him, in his flight; saying, 'You shall tarry still; and if this matter come not to light, you shall say, "he died in the gallery," and I shall return to my Master's service: But if it be known, I shall fly, and take the cryme on me; and none dare pursue you!' Being taken 'red-hand,' the parties were immediately put to the knowledge of an Assise (without the formality of serving a Dittay, &c., as in ordinary cases), before the Magistrates of Edinburgh; or the Trial may have perhaps taken place before the Baron-bailie of the Regality of Broughton, within whose jurisdiction the property of Warristoun was situated, and sentence of death was passed upon them. Unfortunately, the greater part of the Criminal Records of the City of Edinburgh are lost; and, after many fruitless searches, no trace of the proceedings in these Cases can now be elsewhere obtained. The result is thus briefly and quaintly stated by two contemporaneous writers:— 'JOHNE KINCAID of Waristoun murderit be his awin wyffe and fervant man; and her nurische being also upone the conspiracy: The said gentilwoman being apprehendit, scho was tane to the Girth-crosse,¹ upon the 5 day of July, and her heid struk fra her bodie, at the Cannagait-fit; quha deit very patiently. Her nurische wes brunt at the same tyme, at 4 houres in the morneing, the 5 of July.'—*Birrel's Diary*. 'UPON Fryday the 4 (5) of July,² (1600) THE LADY WARISTOUN, daughter to the Laird of Dunipace, was beheaded in the Cannogate, for the Murther of her husband. The Nurfe and ane hyred woman, her complices, were burnt in the Castlehill of Edinburgh. The horfe-boy fled, being guiltie.'—*Calderwood's Church History*, MS. Advocates' Library.

An authentic and extremely interesting 'MEMORIAL' of her 'Conversion,' 'with an account of her carriage at her Execution,' was privately printed, in small Quarto, pp. 48, Edinburgh, 1827, from a paper preserved among Wodrow's MSS. in the Advocates' Library, by Charles Kirkpatrick Sharpe, Esquire, to whose learning, ingenuity, and high accomplishments, the Public has been so often indebted. The very limited impression of this *morceau recherché*, may plead the Editor's apology for stating, as briefly as possible, that this 'Tractate' is entitled, 'A Worthy and Notable Memorial of the great Work of Mercy, which God wrought in the Conversion of Jean Livingston Lady Warristoun; who was apprehended for the vile and horrible Murder of her own husband, John Kincaid; committed on Tuesday, July 1, 1600; for which she was execute, on Saturday following: Containing an Account of her obstinacy, earnest repentance, and her turning to God; of the odd speeches she used, during her imprisonment; of her great and marvellous constancy; and of her behaviour and manner of her death: Observed by one who was both a seer and hearer of what was spoken.' From internal evidence, the writer seems to have been Mr James Balfour, the colleague of the notable Mr Robert Bruce. They were the appointed Ministers, in the North-west part of Edinburgh.

¹ The Cross, situated near the *girth*, or sanctuary of Holyrood, an ancient place of refuge, and still affording protection to debtors, when properly registered; who have liberty to walk within the precincts, free from the molestation of their creditors.

² It is probable that the sentence bore, that the pannels should be executed on the evening of Friday the 4th day of July. The subsequent early execution, at sunrise next morning, was effected, at the solicitation of the family of Dunipace, who indecently urged the Magistrates precipitately to lead Lady Warristoun to the scaffold, before sunrise, shortly after three o'clock in the morning. Owing to a plan, evidently preconcerted, the 'nurische' and 'hyred woman' were burnt on the Castlehill at four o'clock, so that the populace, who might be so early astir, should have their attentions distracted at two opposite stations, nearly a mile apart from each other, and thus, in some measure, lessen the disgrace of the public execution. It is recorded that the Laird of Dunipace behaved with much apathy towards his daughter, whom he would not so much as see previous to her execution; nor yet would he intercede for her, through whose delinquency he reckoned his blood to be for ever dishonoured.

A great portion of this Memorial is occupied with a very affecting account of the state of her mind, and a faithful and striking delineation of its gradual opening and developement, through the patient and affectionate attentions of her spiritual advisers, from a state of perfect callousness and indifference to every thing connected with Religion and the awful situation in which she was placed, to perfect resignation to her fate, and a cheerful, but unfeigned repentance for all her past offences and crimes. So far as relates to her CONFESSION, it cannot be better related, than by quoting her own energetic words.—‘ I think I hear presently the pitifull and fearfull cryes which he gave when he was strangled ! And that vile sin which I committed, in murdering mine own husband, is yet before me. When that horrible and fearfull sin was done, I defyred the unhappy man who did it, (for my own part, the Lord knoweth I laid never my hands upon him to do him evil ; but as soon as that man gripped him and began his evil turn, so soon as my husband cryed so fearfully, I leapt out over my bed, and went to the Hall ; where I sat all the time, till that unhappy man came to me and reported that mine husband was dead ;) I desired him, I say, to take me away with him ; for I feared Tryall ; albeit flesh and blood made me think my father’s moen¹ at Court would have saved me !’ ‘ As to these weemen who was challenged with me, I will also tell you my mind concerning them. God forgive the Nurse, for she helped me too well in mine evill purpose ; for when I told her that I was minded to do so, she consented to the doing of it ; And upon Tuesday, when the turn was done, when I sent her to seek the man who would do it, she said, “ I shall go and seek him ; and if I get him not, I shall seek another ! And if I get none, I shall do it myself !” (This the Nurse also confessed, being asked of it before her death.²) ‘ As for the other two weemen, I request that you neither put them to death, nor any torture, because I testify they are both innocent ; and knew nothing of this deed before it was done, and the mean time of doing of it : And that which they knew, they durst not tell, for fear ; for I had compelled them to dissemble. As for mine own part, I thank my God, a thousand times, that I am so touched with the sense of that sin now : for I will confesse this also to you, that when that horrible Murder was committed first, that I might seem to be innocent, I laboured to counterfeit weeping ; but do what I could, I could not find a tear : And so now I suffer ; for the Lord would not have that high sin concealed, but would have it manifest, as it is his gracious will to be done.’

Owing to the rank of Lady Warristoun, and the powerful influence of her father and his friends, the *manner* of her death was, on their intercession, mitigated to decapitation by the well-known ‘ Maiden.’ The usual form of death, for females, in such cases, was of the most ignominious and shocking description,—burning, after being strangled at a stake,—and in atrocious instances, the Criminal was ‘ brunt quick !’ A very unbecoming zeal was displayed by her relations, to have her executed as *privately* as possible, and at such a time as would be unknown to the populace. They had first intended and applied for the unusual hour of 9 o’clock on Friday evening, as the time for her execution ; which, however, was overruled. The ‘ Memorial’ states, that, ‘ After 3 o’clock in the morning, upon Saturday, the Magistrates wer brought into prison by her friends,³ to take her forth to suffer. Amongst them, some were too earnest to hast her away, that she might be execute, before any should know of it ; albeit she was far otherwise minded, herself ; for she purposed not to have gone furth till between 5 and 6 in the morning. On this, many, whom I will not name, came and said, “ Will you deprive God’s people of that comfort which they might have, in that poor woman’s death ? And will you obstruct the honour of it, by putting her away, before the people rise out of their beds ? You do wrong in so doing ; for the more publick the death be, the more profitable it shall be to many ; and the more gloriouse, in the sight of all who shall see it,” &c. The Magistrates granted also, that she might stay till sun-rising ; but her friends⁴ were so importunate that it was not granted !’

The youth and beauty of Lady Warriston have been much expatiated upon, in the whole of the

¹ Fr. ‘ *moyen*,’ influence, interest.
before the burning of the Nurse.

² This is remarked by the writer, for the Lady Warriston was beheaded
³ Relations. ⁴ Blood-relations.

numerous popular ballads which were made on this occasion ; several of which are *still* sung and recited in various parts of Scotland ! To those who feel curiosity in such matters, reference may be made to *Jamieson's Ballads*, I., 109, *Kinloch's Ancient Scottish Ballads*, p. 49, *Buchan's Ballads*, I., 56, &c.—Although, as the ‘Memorial’ expresses it, she was ‘but a woman and a bairn, being the age of 21 years,’ ‘in the whole way, as she went to the place of Execution, she behaved herself so cheerfully, as if she had been going to her wedding, and not to her death ! When she came to the scaffold, and was carryed up upon it, she looked up to the Maiden with two longsome looks, for she had never seen it before, &c. This I may say of her, to which all that saw her will bear record, that her only countenance moved,¹ although she had not spoken a word ! For there appeared such a majesty in her countenance and visage, and such a heavenly courage in her gesture, that many said, “That woman is ravished with a higher spirit than a man or woman’s !”’

‘THE *summ* of her CONFESSION, which almost was in a form of words, upon the four parts of the scaffold, to which she presented herself, was this.²

“THE occasion of my coming here, is to shew that I am, and have been a great sinner, and hath offended the Lord’s Majesty ; especially, of the cruell murdering of mine own husband ; which, albeit I did not with mine own hands, for I never laid mine hands upon him all the time that he was murdering ; yet I was the divider of it, and so the committer ! But my God hath been alwise mercifull to me, and hath given me repentance for my sins ; and I hope for mercy and grace at his Majesty’s hands, for his dear son Jesus Christ’s sake. And the Lord hath brought me hither to be an example to you, that you may not fall into the like sin as I have done : And I pray God, for his mercy, to keep all his faithfull people from falling into the like inconvenient as I have done ! And therefore, I desire you all to pray to God for me, that he would be mercifull to me !”’

Her conduct on the scaffold appears to have been most heroic. After her devotional exercises were completed, ‘then came to her one of her friends, with a clean cloath, to bind about her face.’ To the fastening thereof, she took out of her mouth a pin, and gave it out of her own hand. The minister, after receiving her last farewell, ‘could not abide longer beside her ; but immediatly left the scaffold and departed. But she, as a constant faint of God, humbled herself on her knees, and offered her neck to the axe, laying her neck, sweetly and graciously, in the place appointed ; moving to and fro, till she got a rest for her neck to lay in. When her head was now made fast to the Maiden, the Executioner came behind her, and pulled out her feet, that her neck might be stretched out longer, and so made more meet for the stroke of the axe ; but she, as it was reported to me by him who saw it, and held her by the hands at this time, drew her leggs twice to her again, labouring to sitt on her knees, till she should give up her spirit to the Lord ! During this time, which was long, for the axe was but slowly loosed, and fell not down hastily ; after laying in of her head, her tongue was not idle, but she continued crying to the Lord, and uttered with a loud voice, those her wonted words, “Lord Jesus, receive my spirit ! O, Lamb of God, that taketh away the sins of the world, have mercy on me ! Into thy hands, Lord, I commend my soul !” When she came to the middle of this last sentence, and had said, “Into thy hand, Lord,” at the pronouncing of the word “LORD,” the axe fell ; which was diligently marked by one of her friends, who still held her by the hand, untill this time, and reported this to me.]’

JUN. 26.—ROBERT WEIR, sumtyme fervande to the Laird of Dynniepace.³

Dilaitit of airt and part of the crewall Murthour of vmq^{le} Johnne Kincaid of Warieftoune ; committit (on Tuesday) the first of Julij, 1600 yeiris.

PERSEWERIS.

Patrik Kyncaid, tutour of Warieftoune, Thomas, Archibald and Adame Kyncaid, all brether to the defunct.

¹ Her countenance alone would have excited emotion, although, &c. ² That is, she repeated her Declaration or Confession at each of the four corners of the scaffold ; which was a stage or platform erected in the centre of the street, at the foot of the Canongate, near the Girth-cross. ³ On the margin, ‘Convict and brokin on the row,’ (*wheel*.)

ASSISA.

George Dewer in Plesance,
Johnne Gairdner thair,
Johnne Henderfoun thair,
James Nicolfoun tailzeour,
Johnne Airmour merchand,

Dauid Hoipis smyth,
Henrie Kello in Leyth-wynde,
Johnne Roger, Maister of fence,
Robert Taillifeir maltman,
Thomas Galloway of Cairnehill,

John Couttis skynner,
William Chalmer in Brochtoun,
John Myller in the Canno-mylne,
Williame Bannatyne thair,
George Roife thair.

The Assyse cheiffis Thomas Galloway chancellor.

QUHILKIS persones of Assyse, being chofin, fworne and admittit, efter accusatioun of the said Robert Weir, be Dittay, of the crymes following, to witt: FOR-SAMEKILL as vmq^{le} JEANE LEVINGSTOUNE, Guidwife of Wariestoun, haifing confauet ane deidlie rancour, haitrent and malice aganis vmq^{le} Johnne Kincaid of Wariestoun, for the allegit byting of hir in the arme, and streking hir dyuerse tymes, the said Jeane, in the moneth of Junij I^m.Vj^c. yeiris, directit Jonet Murdo hir nwreife to the said Robert, to the Abbay of Halyrudhous, quhair he was for the tyme, desyreing him to cum down to Wariestoun, and speck with hir, anent the crewall and vnnaturall taking away of hir said husbandis lyfe. And the said Robert haifing cum down twyse or thryse to the said vmq^{le} Jeane, to the said place of Wariestoun, he could get na speich of hir. At last, the said vmq^{le} Jeane, vpone the first day of Julij, 1600 yeiris, directit the said Jonet Murdo hir nwreife to him, desyreing him of new agane to cum down to hir; quhairto the said Robert grantit: Lykas, at eftir none the said day, the said Robert cam to the said place of Wariestoun, quhair he spak with the said vmq^{le} Jeane, and conferrit with hir, concerning the crewall, vnnaturall and abhominable murthering of the said vmq^{le} Johnne Kincaid. And for performeance thairof, the said Robert Weir was secreitlie convoyit to ane laich feller, within the said place, quhairin he abaid quhill mydnycht: About the quhilk tyme, he, accompaneit with the said vmq^{le} Jeane Levingstoun, cam furth of the said laich feller vp to the hall of the said place, and thairfra cam to the chalmer quhair the said vmq^{le} Johnne was lyand in his bed, takand the nychtis rest; and haifing enterit within the said chalmer, persaveing the said vmq^{le} Johnne to be walknit out of his fleip, be thair dyn, and to preise ouer his bed stok, the said Robert cam than rynnand to him, and maist crewallie, with thair faldit neiffis gaif him ane deidlie and crewall straik on the vane-organe,¹ quhairwith he dang the said vmq^{le} Johnne to the grund, out-ouer his bed; and thaireftir, crewallie strak him on his bellie with his feit; quhairvpoun he gaif ane grit cry: And the said Robert, feiring the cry sould haif bene hard, he thaireftir, maist tyrannoullie and barbaroullie, with his hand, grippit him be the thrott or waifen, quhilk he held fast ane lang tyme, quhill he wirreit him; during the quhilk tyme, the said Johnne Kincaid lay struggilling and fechting in the panes of daith vnder him.² And sa, the said vmq^{le} Johnne was crewallie

¹ The jugular vein. It has often, but improperly, been supposed to signify the flank or iliac vein.

² This is precisely the mode which was, more than two centuries afterwards, adopted by the infamous

murdreift and flaine be the faid Robert; and he is airt and part thairof: As at mair lenth is contenit in the faid Dittay.

VERDICT. The Assyse, all in ane voce, be the mouth of the faid Thomas Galloway, chancellor, chofin be thame, ffand, pronuncet and declairit the faid Robert Weir to be ffylit, culpable and convict of the crymes aboue spcifeit, mentionat in the faid Dittay; and that in respect of his Confessioun maid thairof, in Judgement.

SENTENCE. The faid Justice-depute, be the mouth of James Sterling, dempfter of Court, decernit and ordanit the faid Robert Weir to be tane to ane skaf-fold, to be fixt besyde the croce of Edinburgh, and thair to be brokin upoune ane Row,¹ quhill he be deid; and to ly thairat, during the space of xxiiij houris. And thaireftir, his body to be tane vpone the faid Row, and set vp, in ane publict place, betuix the place of Wareftoun and the toun of Leyth; and to remane thairupoune, ay and quhill command be gevin for the buriall thairof. Quhillk was pronuncet for dome.

Burning of House of Langholm — Horse and Cattle Stealing, &c.

Jan. 11, 1605.—INGRIE AIRMESTRANG, in Inzieholme; Archie Airmestrang, *the Mercheand*, in the Hoilhous; Niniane Airmestrang, in Tortwne; Johnne Airmestrang, in the Hoilhous; Johnne Michelfoun, in Tortwne; Cristie Airmestrang, thair, callit *Nanse Cristie*; Johnne Thomesoun, in Dwmescheilburne; Archibald Airmestrang of Flaskholme; Archibald Airmestrang, callit *Nanse Archie*; Niniane Airmestrang, callit *Roweis Niniane*, in Murthome; Cristie Airmestrang, sone to the Guidman of Langholme (Johnne Airmestrang;) Mathow Twrnour in Hoilhous, and Johnne Couthird.

Dilaitit for airt and pairt of the tressonable Burning of the House of the Langholme; and taking of Harbert Maxwell of Cavense captiue and priffoner: And for the thiftious steilling of certane horse, nolt, scheip, gait: And burning of certane coirnis, pertening to the faid Harbert, Alexander Bell in Eikinholme, Williame Bell in Gallosyde and George Irwing in Holmeheid; committit in the

Burke and his gang, at the West-port of Edinburgh, to suffocate the wretched victims of their hellish traffic. The quaintness of the ancient style even aggravates the horror of the scene.

¹ The cruel and horrible punishment of death on the wheel, has ever been very infrequent in Scotland. Weir was literally broken upon a *cart-wheel*, as appears by the following entry in Robert Birrel's Diary: 'Robert Weir broken on ane cart-wheel, with ane coulter of ane pleuch, in the hand of the hangman, for murdering the Laird of Warriston, quhillk he did, 2 Julii 1600.' The case of Weir is the first recorded instance of such punishment having been inflicted. This lingering and agonizing manner of execution, borrowed from the practice of France, Germany, &c. had perhaps been suggested by the unprovoked and barbarous nature of the murder. It was well calculated to make a deep impression on the minds of the people, corresponding in some measure to the great excitement created in the public mind, by the occurrence of a deed of so deep a die, and perpetrated so near to the metropolis.

moneth of September, I^m.V^c. fourfcoir ane yeiris ; and vtheris crymes fpecifeit in our fouerane lordis letteris.

PERSEWARIS, Harbert Maxwall of Kavenfe, Alexander Bell in Ekieholme, Williame Bell in Gallofyde, George Irrving in Holmeheid.

PRELOCUTOR for the pannell, Mr Johne Ruffell, (advocate.)

It is allegit be the pannell, that be the lawis and Actis of Parliament, in all criminall actiones, the pairtie defender aucht to haif ane autentik coppie of the Dittay and contentis of the fummondis : Bot trew it is, that thair is na coppie delyuerit to the defenderis, bot only tikkettis ; and for verifeing thairof, producet the faidis tikkettis, viz. four in number : And thairfoir na proces.

THE JUSTICE repellis the allegiance, in respect of the executiones.

The pannell askis instrumentis, that the Guidman of Kavenfe abydis at the letteris and executionis, and of the vſing thairof.—It is allegit, that Johnne and Cristie Airmeftrangis, defenderis, the tyme lybellit of the crymes lybellit, war within yeiris (*in minority*;) the faid Johnne of the age of viij yeiris, and Cristie of the age of foure yeiris ; and fa war nocht *doli capaces* ; and be the law of this realme, can nocht be put to the tryell of ane Affyſe.

The haill perfeweris, vnderſtanding that Archie Airmeftrang *the mercheand*, Agnes Cristie Airmeftrang and Anneis Archie ar Innocent of the crymes lybellit, paſſis fra thame: Quhairupone thay askit instrumentis. The perfeweris alfo paſſis fra Roweis Niniane Airmeftrang *ſimpliciter* ; quhairupon he askit instrumentis.

Mr Airthour Scott of Newburcht and Gemilſcleuch become pledge and fouertie that Harbert Maxwall, his wyfe, bairnis, &c. fall be harmeles and ſkaythles in thair bodeis, landis, guidis and geir of the faidis Johnne and Cristie A., ſones to Johnne A. of the Langholme ; the faid Johnne vnder the pane of ane thowſand pundis, and the faid Cristie vnder the pane of fyve hundreth pundis.

Continued to the air of ‘Dumfreis, tertio Itineris, (vel ſuper premonitione) xv dierum.’ (See Vol. II. p. 479.)

Burning the Caſtle of Langholme, &c.

Jan. 11.—JOHNNE AIRMESTRANG of Langholme.

Dilaitit of airt and pairt of the treſſonabill Raifing of fyre about Harbert Irwingis hous in Murthholme, and burning ane grit pairt thairof : And lykwayis for airt and pairt of the treſſonabill Raifing of ffyre at the Caſtell of Langholme, and burning of ane grit pairt of the barnes, byres, ſtables and vther office-houffis of the faid Place of Langholme : And burning of the haill inficht pleneiffing being thairin ; togidder with thre barnes full of beir and corne ; and xxiiij ſtakkis of corne, ſtanding in the barne yaird ; and fourfcoir dargis¹ of hay, with

¹ Darg usually ſignifies a day's work, as much as one man can accompliſh in a day, or ‘*dayis-werk*.’

ane kilfull¹ of malt : And for airt and pairt of the thiftious steilling of threttie nolt, with fax or fevin horfe and naigis, furth of the said Place of the Langholme : Quhilkis all and findrie guidis, geir, coirnes, horfe, nolt and remanent guidis, pertenit to Harbert Maxwell of Kavenfe : committit be the said Johnne, the moneth of September, I^m.V^c. fourfcoir ane yeiris : And siclyk, for airt and pairt of the treffonabill vfurpatioun of his Maieftis authoritie vpone him, in taking in of the said Harbert Maxwell of Kavenfe captiue and priffoner ; and tranfporting him in Ingland, at the tyme foirfaid. ITEM, for Burning of Williame Bellis houfe in Gallowfyde, with tua barnes full of beir, and tua flakkis of aittis ftanding in his barne-zaird : AND for the thiftious steilling fra him of tuentie nolt, threfcoir fcheip and tuentie gait, &c. ITEM, for Burning of Alexander, Richerd and Fergie Bellis houffis in Dikinholme, and steilling threfcoir nolt, tua hundreth fcheip and threfcoir gaittis : ITEM, for Burning and deftroying of Daid and George Irwingis duelling houffis in Holmeheid, with fax barnes full of beir and corne, and aucht roukis of corne, ftanding in thair corne-zaird, and tuentie dargis of hay ; committit the tyme foirfaid ; vpoun fet purpois and prouifioun.

Sir James Johnneftoun of that Ilk of Dunfkellie, kny^t, as cautioner, vnlawit and amerciat in the pane of ane thoufand merkis money.—The Juftice adjudget the said Johnne Armeftang of Langholme, to be denuncet our fouerane lordis rebell, and put to the horne ; and all his moveabill guidis to be efcheit, &c.

Resetting Denounced Rebels, &c.—Resisting his Majesty's Guard.

Mar. 12.—RINGANE² AIRMESTRANG, callit *New-maid Ringane*, and Will Airmestrang of Rowan-burne.

Dilaitit of contravening the Actis of Parliament, in Refsetting and affifting the Kingis Maieftis rebellis, &c.

DITTAY at the instance of Sir Thomas Hammiltoun of Monkland, knyght.

FORSAMEKILL as it is ftatute and ordenit be our fouerane lordis Actis of Parliament, that nane rebell aganis his Maieftis perfoune nor his authoritie ; and quha fa makis the said rebelloun, falbe pwneift thairfore, eftir the quantitie³ of that rebelloun ; As the said Act beris. And als, be ane vther Act of Parliament, it is ftatute and ordanit, that na maner of man, within this realme, wittanlie or wilfullie reffett, fupplie, mantene, defend or do favouris to ony of our fouerane lordis rebellis, and att his hienes horne, vnder the pane of deid and confiscatioun of all thair moveabill guidis ; and to be accufit heirvpoun att particuler dyettis ; as the said Act beris. And trew it is, that Johnne Murray of Stable-Gortoune, Cuddie of the Bankhous, Cristie of Langholme, Andro of the Langholme and Johnne Baittie of the Scheill, fugitiues and outlawis, being denunceit rebellis and att the horne, att the instance of Bernard Lyndfay of the Grange, for nocht making redres and payment to the said Bernard, of the particuler guidis contenit in the Decreit obtenit be the said Bernard aganis thame, for thair maifterfull Stouthreiff and Murthoure, committit be thame, viz. For the maifterfull stouthreiff fra Archbald Lyndfay of his horfe and armour ; and ffra Williame Lyndfay, brother to the Laird of Co-

¹ Kilnfull.

² Ninian.

³ Extent, measure.

vintoune, of his horſe and armour; and ffra James Baillie, guid-fone to the Laird of Covintoune, of his hors and armour; and ffra James Lyndſay, of his hors and armour; ffra Jok Braidwod, of his hors and armour; ffra Thomas Fiſcher, of his hors and armour; ffra Robert Gybfoun, of his hors and armour; ffra Williame Thomſoun, his hors and armour; Jok Fiſcher, his hors and armour; Jok Kay, his hors and armour; ffra Alexander Lyndſay, his hors and armour; Johnne Tod, his hors and armour; Robert Kay, his hors and armour; George Brown, his horſe and armour: Cuthbert Boyd, his horſe and armour; Andro Haddo, his hors and armour; Jok Lyndſay of the Myll, his hors and armour; vmq^{le} Johnne Lyndſay and Edward Tynto, thair horſis and armour: Quhilkis vmq^{le} Johnne Lyndſay, Edward Tynto, togidder with Symone Fiſcher, ſeruitour to Sir James Hammiltoune of Libbertoune, wer crewallie ſlayne be the ſaidis perſones, in following of thame, to red¹ leill mennis guidis, in oppin day-lycht; the ſaidis rebellis being rynnand ane day forrow² and heirſchip throw the countrey: AND Robert Hepburne of Aulderſtoune, Leutennent of his Maieſteis Gaird, accompaneit with ane number of the ſaid Gaird, being direct to aſſiſt and concur with the ſaid Barnard Lyndſay, vpoune the . . . day of Nouember laſtbypaſt, to poynd and diſtreinzie the ſaidis rebellis guidis and geir, for the valour³ of the ſaidis hors and armour, conforme to ane Decreit gewin aganis thame be Andro Lord Stewart of Vchiltrie, Leutennent and Warden of the Weſt Marchis of this realme, in ane Court of Redres, hauldin in the Tolbuith of Drimfreis, the xxix day of December, I^m.V^c.lxxxvij yeiris: IT IS of veritie, that thay and ather of thame, being foirſene of the ſaid Robertis cuming, thay being accompaneit with the ſaidis rebellis, with convocatioun of our ſouerane lordis liegis, all bodin in feir of weir, with jakis, lanceis and vtheris wappinis, *invaſiue*, raiſe in hoſtile maner foirſaid, vpon the day foirſaid, at aucht houris before ſone ryſing, within the boundis of Eſk,⁴ and thair mantenit, defendit, ſuppleit and aſſiſtit the ſaidis rebellis, and ſett upoun the ſaid Robert Hepburne and remanent his Maieſteis Gaird, in executioun of our ſouerane lordis authoritie, in poynding of the ſaidis rebellis guidis; perſewit thame of thair lyves, and chaiſſit thame be the ſpace of aucht myles for thair ſlauchteris: And ſua, thai and ather of thame hes committit maniſeſt rebelloun aganis his Maieſteis authoritie; and he (they) oppinlie mantenit and defendit the ſaidis rebellis, being at his Maieſteis horne, for the ſaidis crymes: And thairthrow, hes contravenit the tennour of the ſaidis Actis of Parliament; and the panis thairin contenit aucht to be execute aganis (them.)

The Aduocat takis instrumentis of the ſweiring of the Aſſyſe, and proteſtis for Wilfull Errour, in cais they acquit. The Aſſyſe takis instrumentis of the pannellis Confeſſioun maid be thame, that thai arraiſe and perſewit the Gaird.

VERDICT. The Aſſyſe, be the mouth of Johnne Weir of Clowburne, chancellor, ſſand, pronunceit and declarit the ſaidis Ringan and Will to be culpabill, ſſylit and convict of the crymes aboue writtin.

SENTENCE. The Juſtice-depute, be the mouth of James Henryſoun, dempſtar of Court, decernit and ordenit the ſaidis Ringan and Will to be tane to ane gibbet beſyde the mercat croce of Edinburgh, and thair to be hangit quhill thay wer deid; and all thair movabill guidis to be eſcheit, &c.

‘Falſet’ — Perjury — ‘Man-swearing’ — Cruel Oppression.

Mar. 15.—ALEXANDER CHENE, in the Haltoun of Balhalvie, Alexander Waſtland, his ſerveand, and Alexander Croy, ſeruitour to the Laird of Auchterallane.

¹ To get reſtoration, &c. ² Literally, running a day-foray through the country, openly carrying on their violence and depredations in broad daylight. ³ Value, ‘avail.’ Lat. *valor*. ⁴ Eskdale.

Dilaitit of Periurie and menfweiring of thame felffis, in prefens of the Lordis of Secreit Counfall.

DITTAY, at the instance of Sir Thomas Hammiltoun of Monkland, Aduocat.

FORSAMEKILL as thay and thair complices, being perfewit befor the Lordis of his hienes Secreit Counfall, ffor cuming vpoun the xxvj day of December laft, att mydnycht, to George Duncanis duelling hous in Ardo, quhair he, with his wyffe and famelie, wer in peciabill and quyet maner for the tyme, takand the nychtis rest, lipning¹ for na iniurie nor oppreffion to haif bene offerit to thame; and thair, violentlie brak vp the dur of the faid Georgis duelling hous, enterit thairin, and tuik the faid George and his wyffe, fcho being grit with chylde, out of thair naikit beddis, band thame with coirdis, and maift crewallie and vnmercifullie, but² pitie or compaffion of the faid Georgis wyffis eftait, fcho being grit with chylde, as faid is, ftrak and dang thame with rounGIS³ and batounis brocht with thame for the purpoife; fa that the faid George wyfe almaift pairtit with bairne; and haifing maift fchamefullie ftrukin and leifchit the faid George him felff with beltis: Committing thairby maift oppin Oppreffionne. FOR the quhilk Oppreffionne, the faid George, haifing rafit oure fouerane lordis Letteris, and thairwith fummond the faid Alexander Chene to compeir before the Lordis of his hienes Secreit Counfall, the fourtene day of March instant, to anfuer to the faid Complaint; and haifing, be vertew of the faidis Letteris, lykwyfe fummond the faid Alexander Waftland and Alexander Crag to beir witneffing in the faid mater; quhom the faid Alexander Chene, haifing fallie fubornit to periure and menfweir thame felffis, to depone fallie aganis thair knowledge and confcience in the faid mater, and to conceill the treuth thairof: The faid Alexander Chene and remanent perfounes, compeirand before the Lordis of Secreit Counfall, the faid xiiij day of March instant, and being deiplye fworne, be thair grit aithis, to depone and tell the treuth in the faid mater, and to beir leill and fuithfaft witneffing thairin; being vnmyndfull of thair dewtie towardis God, and haifing na regaird nor reverence to our fouerane lordis auctoritie and lawis, and his hienes maift honorabill Counfall, fallie, be thair Depofitiounes, Periureit and Menfweir thame felffis; the faid Alexander Croy and Alexander Waftland deponing, that thay wer nather present att the faid deid, nor knew nathing in the faid mater; and the faid Alexander Chene, be his Depofitiounis, declairit, that he fould be content to be hangit,⁴ in caice it fould be provin or tryit that he ftrak the faid George Duncan or his wyffe: And lykwyfe denying that he had fubornit the faidis witneffis, or instructing thame to deny or conceill the treuth: AND nochtwithftanding thairof, the faid Alexander and the faidis witneffis being re-examinat, hes all deponit that thay wer all present att the faid ffact and Oppreffionne, and that the faid Alexander Chene ftrak the faid George Duncane with ane rung, and beltit him naikit with ane fword-belt; and wer all present att the faid manifest Oppreffionne: And als confeffit, that the faid Alexander Chene had instructit, feducit and fubornit the faidis Alexander Croy and Alexander Waftland to Periure and Menfweir thame felffis, and depone before the Lordis of Secreit Counfall, that thay wer nocht present with him att the faid fact, and knew na thing thairof: AND SA, thay and ilk ane of thame hes nocht only committit manifest Oppreffionne be the faid fact and hes Periureit and Menfworne thame felffis: bot als, hes committit manifest ffalfet; and as periureit and fals personis ar nocht worthie to leve; aucht and fould be pwneift, conforme to the Lawis of this realm and to the Commoun-Law; in terroure and example of vtheris faull-les⁵ perfounes, to committ the lyke Periurie and ffalfet in tyme cuming.

ASSISA.

Robert Hog, fumtyme feruitour to my Lord of Marfchell,	Johnne Ramfay of Quhytehill,
Dauid Wod, brother to the Laird of Balbegnocht,	James Stewart, agent for my Lady Atholl,
Robert Crawford of Caverhill,	Johnne Mowbray, portioner of Crawmond.

The remainder are burgeffes, &c.

¹ Trusting that no injury, &c. ² Without. ³ Cudgels. ⁴ Other instances are on record of witnesses perjuring themselves, and making this awful asseveration, being taken at their word. ⁵ Soul-less, devoid of conscience.

VERDICT. The Affise, be the mouthe of the said Johnne Ramfay, chancellor, ffand, pronunceit and declairit the pannell to be ffylit, culpable and convict of the crymes aboue writtin, conforme to thair Depositionis and Confessioun.

SENTENCE. The Justice-depute, be the mouth of James Stirling, dempstar of Court, decernit and ordained the said *Alexander Chene* to be tane to the mercat croce of Edinburghe, and thair his heid to be strikin fra his body: And the said *Alexander Wasland* to be tane to ane gibbet besyde the mercat croce of Edinburghe, and thair to be hangit quhill he be deid: And the said *Alexander Croy* to be skurgeit throw the toune; as he that fyrst confest the veritie: And all thair movable guidis to be escheit and inbrocht to our fouerane lordis vse, as fugitiue fra the lawis for the saidis crymes.

Slaughter.

Mar. 28.—JOHNE SPOTTISWOID OF THAT ILK.

Dilaitit for airt and pairt of the felloun and crewall Slauchter of vmq^{le} Thomas Quhippo of Leyhouffis; committit in the moneth of Junij, the yeir of God I^m.V^c.lxxxxv yeiris; vpoun set purpois, provisioun and foirthocht felony.

James Tennant of Lynhous, as fouertie, ordanit to be vnlawit and amerciati in the pane of ffyve hundreth merkis for nocht entry of the said Johnne, to vnderly the law, &c.; and als, adiudget the said Johnne to be denunceit our fouerane lordis rebell and put to his hienes horne, and all his moveabill guidis to be escheit, &c.

Messenger Forgeing and Signeting False Letters and Executions, &c.

Mar. 28.—WILLIAME STRAUCHANE, messinger.

Dilaitit ffor the ffalsifieing, fforgeing, Counterfuteing, devyfeing, subscryveing and signetting of foure fals Charges and Executiones, with the Denunciatioun of Hoirning following thairupoune, ffalslie vset and execute be him. Quhilkis charges and denunciatioun, and everie ane of them, are, be Decreit of the Lordis of Sessioun, of the dait the sevint day of Marche instant, civillie and lauchfullie Improvin, and ffund be the saidis Lordis to be ffals and ffeinzeit in thame felffis, &c.

VERDICT. The Affise, be the mouth of Peter McDowell of Machermoir, chancellor, ffand, pronuncet and declairit the said Williame (in respect of the said Lordis Decreit, producet aganis him, ffinding the saidis Executiones to be ffalse and ffeinzeit) to be Fylit, culpabill and convict thairof.

SENTENCE. The Justice-depute, be the mouth of James Henderfoun, dempster, decernit and ordanit the said Williame to be scurget throw this burgh; and to be depriuēt of his office of messingerie and notarie, and nevir to vse the samyn in ony tyme cuming; vnder the pane of hanging, but (*without*) fauour; as he that was convict of the crymes aboue writtin.

Hurting — Wounding — Mutilation.

Apr. 9.—PATRIK CARKETTILL of Markill, George Carkettill, his brother, Johnne Broune, brother to the Laird of Colstoune, and Robert Smyth, fervand to the said Patrik.

Dilatit of airt and pairt of the Hurting, Wounding and Mutilatioun of James Libbertoun, fervand to James Lord of Balmirrienoch of his left eie; and remanent crymes contenit in the Letteris.

PERSEWARIS, James Libbertoune, Mr Thomas Hoip, Aduocat-substitute.

PRELOCUTOURIS for the persewer.

The Laird of Henderstoun, Mr Robert Lyntoun, Aduocat-substitute for the Kingis Aduocat.

PRELOCUTOURIS for the pannell, the Laird of Wauchtoun, the Laird of Innerleyth, the Laird of Craigmyller, Sir Johnne Prestoun of Valafeild, Mr Johnne Ruffell, Mr Alexander King, Aduocattis.

My Lord President¹ producet the Kingis Maiesteis Warrant; quhair of the tennour followis.

JAMES R.

JUSTICE, Justice Clark and 3oure deutes, We greit 3ow weill. In pe tryell of pe particuler mater persewit before 3ow, at pe instance of James Libbertoun in Neper Libbertoune aganis Patrik Carkettill of Over Libbertoun and his complices, for pe mutulatioun of pe said James; committit be pame in pe moneth of . . . lastbypast: In cais (it) be fund be 3ow that 3e can nocht, for pe present, ressaue pe tryall of pe said mutulatioun, in respect of pe schortnes of tyme intervening, and before the expyring of 3eir and day eftir pe committing of pe fact; and swa 3e salbe forceit to continew 3our proceeding in pe mater: In quhilk cais, it is our speciall will and pleasour, that 3e fall command the saidis persounes to enter pair persounes in waird, within pe Castell of Blaknes, thairin to remane, quhill thay be ffynit be our Counfall pair, for pair cryme and offence committit be pame; and frome pame obtene Warrant for pair releif. Quhairanent thir presentis salbe 3our Warrant. Gewin att Grenewiche, this tuentie day of March, 1605.

THE Justice continewis this dyet to the faxtene day of Maij nixtocum; and ordanis the persounes on pannell to entir in waird, within the Castell of Blaknes, within xlvijj houris; and to find caution to that effect.²

Sir George Prestoun of Craigmiller, kny^t, become pledge and fouertie, &c.; and that thay fall enter in waird, &c. thairin to remane, and onnawayis to depairt furth thair of, quhill thay be fred be ane Warrant; and that vnder the panes following, viz. ffor the said Patrik ane thousand merkis, the saidis George and Johnne ffyve hundreth merkis, and the said Robert tua hundreth merkis.

Intercommunings with MacGregors.

Apr. 26.—COLENE BRUCE in Middilhauch of Ruthven (Huntingtour,) Patrik Bruce thair and Alexander Bruce thair.

Dilaitit ffor the tressonable Resset, Supplie and Intercowmoning with Johnne Dow Galt M^cgregour, Johnne Dow M^cewin M^cgregour and Gregour M^cewin,

¹ James Lord Balmerinloch, President of the College of Justice. ² The case was farther delayed to May 29, but no entry occurs of that date; so that it is likely the parties compounded with the Treasurer and private party, by payment of a stipulated fine.

cowmone theivis, tratouris and rebellis to his Maiestie; and that within thair houffis in the Middill-hauch of Ruthven and dyuerse vtheris places, mony and dyuerse tymes, in the yeiris of God, I^m.Vj^c. and thre and foure yeiris; eftir the Murthour of Glenfrwne,¹ and eftir the faidis perſones war declairit rebellis and tratouris, and all our ſouerane lordis leigis war lauchfullie prohibeit and diſcharget to reſſett, ſupplie, aſſiſt or intercommown with the faidis M^cgregouris, rebellis and fugitiues, as ſaid is, vnder the pane of Treſſone.

For the quhilkis crymes aboue writtin, the faidis perſones on pannell becum in our ſouerane lordis will. Quhairupone Sir Thomas Hammiltoun (of Monkland, kny^t, Aduocat to our ſouerane lord) aſkit instrumentis.

Aug. 6.—THE KING'S WILL was this day declared against the pannels, as follows.

JAMES R.

JAMES, be pe grace of God, King of Gritt Britane, France and Ireland, defender of the ffaith. To our Juſtice, Juſtice clerk and 3 our deputis, greting. Forſamekill as Colene, Patrick and Alexander Bruces in the Mydillbauch of Huntingtour, being callit and convenit befor 3ow, ffor the Aſſiſting, Reſſett, Supplie and Intercommowning with the CLANGREGOUR, aganis the tennour of our Proclamationes maid pairanent; thay ar becum in our will for the ſame: And albeit thay haif incurrit and mereit the pane of deathe, for that cryme, 3it We, of our ſpeciall grace and mercie, ar content to diſpenſe with the rigour of the law; and haif declairit and declares our Will as followis, to witt: That pe faidis perſones ſall be Baneift the haill boundis of our dominiones, during pe haill dayis of pair lyftymes; vnder the pane of deid, and to be hangit but forder proces: And that thay find ſufficient and reſponſall cautioneris and ſouerteis, actit in the buikis of our Adiornall or Secreit Counſall, that betuix the day and dait heirof, and the tuentie day of Auguſt nixtocum, thay ſall depairt and paſs furth of our dominiones; and nocht returne agane within pe ſamyn, during thair lyftymes, vnder the pane of ffyve thouſeand merkis, to be payit be the faidis cautioneris coniunctlie and ſeuerallie, in cais pe faidis perſones or ony of thame fail3ie in the premiſſes; the ane half of the ſaid pane to ws and our Theſaurer in our name, and pe vper half to Daud Lord Scone,² our Comptroller, beſydis the pane of deid to be incurrit be pe criminallis pame ſelfſis; with this prouiſioun, that in caice the faidis criminallis or ony of thame ſall happin to returne within our dominiones, and nawayis commit ony violence, harme or iniurie aganis ony of our ſubiectis aſoir pair apprehenſioun, in that caice pair cautioneris perſewand and apprehendand thame, and preſenting thame to Juſtice, the executioun of pe faidis criminallis ſall liberat pe faidis cautioneris of all payment of the pecuniall ſowme foirſaid: And gif thay ſall happin to commit ony violence or harme aganis ony of our ſubiectis, eftir pair returning within our dominiones; in that caice, pair cautioneris to be ſubiect to the payment of the pecuniall ſowme foirſaid, and the criminallis thame ſelfſis to vnderly the perſonall pwneſchment foirſaid: Commanding heirby 3ow our ſaid Juſtice to pronunce this our Will judiciallie; and to caus thir preſentis be infert in the buikis of our Adiournall. Gevin att Grenewiche, the . . . day of Junij, 1605.

(Sic ſubſcribitur)

MONTROIS, Commiſſionar. AL. Cancell.³

Patrik Bruce of Fingask and Mr Alexander Bruce, fear of Cultmalindie, become cautioners, and the Bond is regiſtered at length; the witneſſes are George Bruce of Carnok, Sir Johnne Bruce of Airthe, knycht, Johnne Kincaid, writer, and Johnne Kemp, his ſeruitour.

¹ See Jan. 20, 1604. ² Sir David Murray of Gospertie, afterwards Viſcount Stormont, whose name ſo frequently occurs in the matter of Gowrie's Conſpiracy. ³ Alexander Lord Fyvie, Chancellor, afterwards Earl of Dunfermline.

Hurting and Wounding — Mutilation.

May 9.—GEORGE FORRESTER, sumtyme servand to my Lord of Roxburcht.

Dilaitit, accusit and persewit be James Skirving in Gilkerstoun of the DITTAY following, viz.

FORSAMEKILL as the said George, haifing consauet ane deidlie feid, rancour and malice aganis the said James Skirving, sumtyme in Humbie and now in Gilkerstoun, for the allegit hurting of him; the said George, to be revenget thair of, without regaird of justice, in the moneth of Januar, the yeir of God I^m.V^c. fourscoir fyftene yeiris, vnderstanding that the said James was to cum furth of the Place of Hambie, and to pas hame to his awin duelling-hous, than in Humbie mylne, he darnit him self in ane bourtrie bufs,¹ at the heid of Wolfstatt; and in the said James bycuming, sett vpone him, and be way of brigancie,² vnder silence and clud of nycht, betuix aucht and nyne houris at evin, with ane swoird and quhinger in his hand, maist crewallie persewit him for his slauchter, hurt and woundit him in his richt airme and richt hand, and hes mutilat and made him impotent of the samyn; and gaif him auchtene bludie and deidlie woundis; and left him lyand for deid vpone the grund: And the said George was airt and pairt of the hurting, wounding and mutilatioune of the said James Skirving; committit in maner and at the tyme soirsaid, vpone set purpois, prouisioun and foirthocht felony.

PERSEWER, James Skirving, sumtyme in Humbie, and now in Gilkerstoune.

PRELOCUTOR for the persewer, Mr Walter Bellenden.

PRELOCUTORIS for the pannell.

Mr Johnne Ruffell, Sir Jedione Murray, My Lord Cranstoune, Mr Laurence M^cGill.

It is allegit be the persewer, that the pairtie defender is at the horne; and thairfoir na prelocutouris can compeir and defend in this persute.—It is anfuerit be Mr Johnne Ruffell, that albeit he be at the horne, and lauchfullie at the horne, yit he may compeir for the rebell. *Secundo*, the Hoirning is null, becaus the pannell being than servand to my Lord of Roxburcht,³ the denunciation at the mercait croce of Edinburghe, and registratioune in the Schereffis buikis of Edinburghe is nocht lauchfull, nor accoirding to the Act of Parliament, bot sould haif bene denuncet at Jedburcht, and registrat in the Schereffis buikis of the Scheref-dome of Roxburcht.—It is replyt be the persewer, that my Lord of Roxburcht duelt, the tyme of the denuntiatioune, within the burgh of Edinburghe; and thairfoir the Hoirning, in the haill poyntis thair of, is sufficient; and the Hoirning standis vnreducet, quhairin he was charget, personallie apprehendit, to haif fund cautioune for his compeirance, vpone xv dayis wairning.

It is allegit be the pannell, that this matter can nocht be put to ane Affyse, becaus he is persewit for Mutilatioune, and nocht tane *in recenti crimine*, and nocht charget vpon xv dayis wairning, nor na coppie of the Dittay is geuin him. Anfuerit be the persewer, that he is summond alreddie, vpone xv dayis wairning, personallie apprehendit, and a coppie delyuerit, and put to the horne, and be vertew of Letteris of Captioun, tane and apprehendit and presentit to pannell.—It is allegit that he is nocht summond to this day vpone xv dayis wairning;

¹ Concealed himself in an elder bush.

² Robbery. Old Fr. *briganderie*.

³ Sir Robert

Kerr of Cessfurd was created Lord Roxburghe, anno 1600; and Earl, in 1616.

and gif he was fummond of befoir for this cryme, be vertew of vther letteris, and put to the horne, the samyn Hoirning is null ; for the causis aboue writtin. It is anfuerit, the Hoirning standis vnreducet.—It is forder allegit be the pannell, that befoir this matter pafs to ane Affyse, this mutilatioune man be tryit be Chirurganes. It is anfuerit be the defender, that he referris the cognitioun of the Mutilation to the Affyse.

THE JUSTICE ffindis this matter to be be put to ane Affyse, nochtwithstanding the former allegeances.

It is allegit, that my Lord Justice Clerk and his deputis can nocht be Clerkis in this proces, becaus this perfewer is Tennent to my Lady Humbie, spous to my Lord Justice Clerk,¹ to quhome he payis maill and deutie, and thairfoir na proces ; and Mr Walter Bellenden, as prelocutour for the perfewer, is brother-in-law to my Lord Justice Clerk ; and thairfoir my Lord Justice Clerk can nocht be Clerk in this proces.—It is allegit be Mr Johnne Russell, that, in respect Mr Walter Bellenden, prelocutour for the perfewer, compeiris and perfewis, and the perfewer is Tennent to my Lady Humbie, his lordshipis spous, my Lord Justice Clerk can nocht be Justice Clerk in this proces. It is anfuerit, that Mr Patrik Bannatyne is ordiner clerk to the Justice, to all the legis.

THE JUSTICE Ordanis Mr Patrik Bellenden, ordiner Clerk, to proceed as Clerk in this proces.

Forder, it is allegit that na proces can be grantit, becaus my Lord Justice Clerk can nocht be Clerk in this proces, feing Mr Walter Bellenden, the prelocutour for the perfewer, is his brother-in-law ; as also, the perfewer is Tennent to my Lady Humbie of the landis of Gilkerstoun and Gilkerstoun-mylne ; as also, is tennent to my Lord him felff. Anfuerit, thair is ane ordiner clerk, viz. Mr Patrik Bannatyne, aganis quhome thair is na exceptioun, quha is ordiner Clerk to all our fouerane lordis leigis.—The anfueris foirfaid meittis nocht the declinatour, becaus the alledgeance is proponit aganis the Justice Clerk, without ony mentioun of Mr Patrik Bannatyne.

THE JUSTICE ffindis proces, and Mr Patrik Bannatyne to be clerk, vnles he propones a relevant alledgeance aganis him as ordiner clerk.

Thaireftir the pannell and prelocutouris declairit that thai only propone the declinatour foirfaid aganis my Lord Justice Clerk, quhy he fould nocht be clerk ; and ar content, that quhan his lordship is remouet furth of Jugement, in respect of the declinatour foirfaid, gif fa be fund, Mr Patrik fall remane as clerk ; but² preiudice of sic lauchfull exceptiones as may be proponit aganis him, the faid

¹ Sir John Cockburn of Ormistoun, Lord Justice Clerk, married Elizabeth, the eldest daughter of Sir John Bellenden of Auchnoule (by his second wife, Janet Seton), and widow of James Lawson of Humbie.

² Without.

declinatour being first discuffit. It is allegit be the pannell and his prelocutouris, vnder protestatioun that the former declinatour be first discuffit, and na vtherwayis, that Mr Patrik Bannatyne can nawyis be admittit to be clerk in this proces, for tua cauffis; first, because he is Depute to my Lord Justice Clerk, aganis quhome the former exceptioun declinatour is proponit, and hes his office only of his lordship presentlie; and sua the exceptioun competent aganis the Clerk-principall, man be also competent aganis his Depute: Nixt, becaus Mr Walter Bellenden, quha is prelocutour, and Mr Patrik is thridis or ferdis of kyn to Sir Johne Bellenden of Auchnoull, and James Bannatyne of Newtyle ar thridis or ferdis of kyn; and declairis that Sir Johnne Bellenden,¹ father to Mr Walter, and James Bannatyne, father to Mr Patrik, ather thair guidfchiris or grandfchiris war brether.—And Mr Patrik Bannatyne being fworne, declairit that the former alledgeance of kynreid was nocht trew.

THE JUSTICE findis proces; and ordanis Mr Patrik Bannatyne to be Clerk to this proces, quha is ordiner Clerk to all our fouerane lordis leigis, to the Justice.

The pannel takis instrumentis of the Justice Interlocutour; and protestis for remeid of law.

The Defender declairis he will nocht feik the perfeweris ayth, vpon the verificatioun of the Dittay; bot only craves quhat the perfewer produces to verifie. The perfewer declairis that he fall schaw his mutilatioun to the Assyse.

VERDICT. THE ASSYSE, be the mouth of Williame Johnnestoun in Over Keyth, chancellor, be pluralitie of voittis, fand, pronuncet and declairit the said George Forrester to be ffylit, culpable and convict of the Hurting, Wounding and Mutilatioun of the said James Skirving of his richt airme and richt hand, in maner specifeit in the said Dittay.²

Slaughter.

May 22.—WILLIAME THOMESOUNE in Reddene.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Niniane Edzer.

Sir Andro. Ker of Hietoun, knycht, become pledge and fouertie that he fall compeir befoir the Justice or his deputis in the Tolbuth of Edinburghe, the tuentie-fyve day of July nixtocum, to vnderly the law, &c. vnder the pane of Ten thousand markis; quhairof the ane half fall be payit to the Kingis Maiesteis Thesaurer, and the vther half to the pairtie perfeweris.—On Jul. 25, the Justice continued the case to the air of Roxburcht, ‘tertio Itineris (vel super premonitione) xv dierum, Plegio, Joanne Ker de Bowdene.’

Slaughter — Shooting with Pistolets and Guns.

May 31.—JOHNNE MURE of Auchindrane,³ Johnne Mure of Craiglkene,

¹ Of Auchnoule.

² The Sentence is not contained in the Record.

³ See the Trial of this infamous man, Jul. 7, 1600, &c., for the atrocious Murder of Sir Thomas Kennedy of Culzeane, &c.

Moyfes Lokhart, brother to the Laird of Bar, James Bannatyne in Chapel-Donall, Daudid Kennydie, younger of Maxwallow, Charles Dalrumpill, burges of Air, George Campbell, younger of Schankstoune, and Gilbert Kennydie in Machar.

Dilatit, accusit and perfewit, be Richart Spens, in Vgftoune, as father to vmq^{le} Richart Spens, feruitour for the tyme to Johnne Erll of Caffillis, and Sir Thomas Hammiltoune of Monkland, Aduocat to our fouerane lord, for his hienes interes, ffor airt and pairt of the Slauchter of the faid vmq^{le} Richart Spens; and for bering, wering and schuteing of pistolettis and gunnis,¹ contrair the tennour of the Actis of Parliament; committit vpoun the nynt day of December, the yeir of God I^m.Vj^c. and ane yeiris, vpoun the landis of Pennyglenne.

PERSEWER, Richerd Spens in Vgftoune, Sir Thomas Hammiltoune of Monkland, Aduocat.

PRELOCUTORIS for the pannell, My Lord Vchiltrie, The Laird of Drumlanrig, The Laird of Rowallane, Jofias Stewart (of Boningtoun), Mr Johnne Ruffell, Mr Williame Oliphant.

(The two Mures, Lokhart and Bannatyne,) tuik thame to our fouerane lordis Respett,² produceit, vnder the Prewie Seil, of the daitt, att Falkland, the tuelff day of Junij, the yeir of God I^m.Vj^c. and tua yeir, for the faidis crymes. Quhilk Respett the Justice admittit; and ordanit thame to find caution and fouertie to fatisfie the pairtie, for airt and pairt of the faid slauchter: Lyke as, Matho Stewart of Dunduff, Jofias Stewart of Boningtoun, and George Campbell younger of Schauleftoun become cautioneris and fouerteis with thame selffis, coniunctlie and feuerallie, to fatisfie the pairtie, for airt and pairt of the Slauchter of the faid Richard Spens.

George Campbell also obtained 'oure fouerane lordis Respett, produceit, vnder the Prewie Seill; of the dait, at Halyruidhous, the last day of November, 1602.' Matho Stewart of Dunduff, Jofias Stewart of Boningtoun and Johnne Mure of Auchindrane become pledgeis, &c.

The case was continued, as to the remainder of the persons on pannel, to the Justice-air of 'Air, tertio Itineris (vel super premonitione) xv dierum.'

[*Mr William Hairt of Levelandis and Mr William Borthuik, Justices-Deputes.*]

Mutilation and Demembration.

Jun. 11.—EDUARD JOHNNESTOUNE, younger, merchand burges of Ed^r.

Dilaitit of airt and pairt of the Demembring of Johnne Broun, goldsmyth, of the thombe of his left hand; committit vnder nycht, the sevintene of May last.

PERSEWERIS, Johnne Broun, goldsmyth, Sir Thomas Hammiltoune of Monkland, Aduocat.

PRELOCUTORIS for the pannell, The Laird of Johnnestoune, The Laird of Wastraw, Mr Alexander King, Mr Thomas Gray and Mr Johnne Johnnestoune (Advocates.)

It is allegit be the pannell, that this matter can nocht be put to the knowlege

¹ This is the first instance in the Record of the term 'gun'; 'hagbut' being the prevalent name for that weapon.

² Remission, respite.

of ane Affyse ; becaus the fact lybellit is committit vnder scilence of nicht, and the said Johnne Broune, being convenit befor the Lordis of his hienes Secret Counfall, he is convict on ane manifest Ryote, for the wrangus invaiding, trub-billing and molesting of the defender, his wyf and fervand, vnder filence of nycht, and sua, quhatfumeuir fell out be that occasioun, the falt was in the per-fewer ; and of the law, albeit he had been flane, the said defender had bene in na danger : In respect quhairof, the samyn aucht nocht to be put to the know-ledge of ane Affyse. For verificatioun quhairof, producet the Lordis of Secret Counfellis decreit, daitit the xxij day of Maij last, 1605. It is anfuerit, that the allegiance nawayis meittis the Dittay ; feing the Dittay is the said Johnne Brounes persute, for redress and pwneischment of the Mutilatioun and Dismembring of him, quhairof thair was nather complent nor tryell, befor the Secret Counfall ; nather can ony thing, done in that judgement, stay the puting of ane relevant Dittay to ane Affyse, befor the Justice ; feing, the Counfall could nocht be Judges to the samyn ; and the matter being put to ane Affyse, the Affysouris will try, quhither the fact was done in lauchfull defense of the pannell or nocht.

THE JUSTICE continewis this Interlocutour to the xvij of this instant. ‘ Plegio, Waltero Ker, portionario de Diriltoun.’

(Jun. 18.)—On xvij June,¹ The Justice findis proces, nochtwithstanding of the allegiance proponit the last dyett, and left at Interloquutour. And eftir the pronouncing of the said Interloquutour, of consent of bayth the parteis, continewis this persute (quhill the) xxvij day of Junij instant. ‘ Plegio, M^{ro} Joanne Johnnestoun, aduocato.’

DITTAY against Edward Johnnestoun, Younger.

FORSAMEKILL as, vpon the sevintene day of Maij lastbypast, vnder nicht, thair fell out ane debait² betuix the said Eduard Johnnestoun and Patrik Robertfoun, feruitour to George Cuninghame, gold-smyth, burges of the Cannongait, vpon the hie streit of the burgh of Edinburghe, aboue the Stink-and-style³ thair of : and for eschewing of hurt that nicht haif fallin to aither of the saidis parteis, the said Johnne Broune, amangis vther honest nichtbouris, preissit to red⁴ thame : Nochtwithstanding, it is of veritie, that the said Eduard Johnnestoun, persaveing the said Johnne Broun to cum and resist and stay his furie, he left the said Patrik, and but⁵ offence gevin be the said Johnne Broun to him, ather be word or deid, he sett vpon the said Johnne with ane drawin swoird, and maist crewallie invaidit him for his slauchter, hurt and woundit him in his left hand, to the effusioun of his bluid in grit quantitie ; and hes Mutilat and dismemberit the said Johnne of the thombe of his said left hand, and cuttit the samyn away ; and sa hes maid him alluterlie vnhabill to wyn his leving, in his airt of goldsmyth-craft ; to his vtter wrak, and to the grit contempt of our fouerane lord, his hienes authoritie and lawis : And the said Eduard Johnnestoun is airt and pairt of the said Mutilatioun, demembring and cuting away of the said Johnne Brounes thombe of his said left hand. For the quhilk he aucht and sould be pwneisheit, conforme to the lawis of this realme, in exampill of vtheris to commit the lyk, in tyme cuming.

¹ Mr Williame Oliphant is added to the *Prelocutouris*, and on 27 June, Mr Thomas Craig. ² An altercation and scuffle. ³ A narrow passage to the eastward of the entrance to Haddo's-hold, New North Church, and celebrated for similar rencontres. ⁴ Separate. ⁵ Without provocation, excepting the proverbial fate of those who indiscreetly interfere in such matters. The ‘ *redding-straik* ’ was no child's play in those days, when sword and dirk were the swift ministers of vengeance !

VERDICT. The Assyse, be the mouth of Daud Fairlie, merchand burges of Edinburghe, chancellor, for the maist pairt, ffand, pronounceit and declairet the said Eduard to be Clene, innocent and acquit of airt and pairt of the Mutilatioune, &c. ; in respect, vpon thair consciences, as thay haif tryit and confidderit, the famin proceidit vpon the said Johnne's awin default ; and was committit and done be the said Eduard, the tyme foirsaid, in defence of him selff, his wyfe and fervand, quha war invaidit and molestit be the saidis Johnne Broune and Patrik Robertsfoune, vnder nycht. Quhairupoune the said Eduard askit instrumentis.

'Umbesetting'—Rape—Child-murder.

Jun. 18.—JOHNNE BROUNE, goldsmyth, burges of Edinburghe.

Dilatit for Vmbesetting of Katherene Rae, spous to Eduard Johnnestoune, younger, merchand burges of Edinburghe, and preiffing to fforce hir ; and cauffing hir to pairt with bairne.

PERSEWAR, Eduard Johnnestoune, younger, merchand burges of Edinburghe.

PRELOQUUTOIRIS for the pannell, The Laird of Phillorth, Mr Johnne Russell, Mr James Donaldsfoune.

THE JUSTICE continewis this matter to the xxvij day of Junij instant.

DITTAY against Johnne Broune.

(Jun. 27.)—FORSAMEKILL as, vpon the sevintene day of May lastbypast, the said Katharene and Eduard, hir husband, haifing souppit in pair faperis hous, and being returning eftir supper, about ten houris at evin, fra pair said faperis house to pair awin ludgeing, in peceable and quyet maner, lipning for na harme, iniurie or persute of ony persones, bot to haif past in peceable maner throw the Hie-streit of pe said burgh of Edinburghe to pair said ludgeing, vnder Godis peax and our souerane lordis ; it is of verritie, that pe said Johnne Broun, goldsmyth, accompaneit with Patrik Robertsfoune, burges of Aberdene, persauing the said Katharene to be hir selff, allane, accompaneit allanerlie¹ with ane fervand woman ; and finding pe gait² to be quyet, sa that nane was pairupone, to mark pair doingis, or to stay thair intendit schamefull and villanuse interpryse ; the said Johnne Broun and Patrik Robertsfoune resoluēt violentlie to haif fforcet pe said Katharene and hir fervand woman : And for pis effect, the said Johnne come to the said Katharene, and brak furth in findrie vncumlie and vnholonest speiches to hir, beleifing to haif perswaidit hir to haif yeildit to his filthie lust and beistlie appetite ; and finding him self disappointed of pat meane, he, in his beistlie rage and furie, as ane posselt with ane wikket spreit, maist schamefullie and crewallie grippit pe said Katharene Rae be the gorget, and violentlie drew hir aff pe hie streit to ane cloise-heid,³ vnder ane stair ; and pair crewallie, with his faldit neiffis, strak and dang hir in the face, and causet hir to bleid at mouth and neife in grit quantitie ; raif hir courche⁴ and remanent ornamentis of hir heid, and cuist pe samyn vnder his feit ; and, with his kneysis, punchet pe said Katharene in the bellie, scho being grit with chyld ; and had nocht faillit to haif abuset hir chaftitie, gif pe said Eduard, hir husband, and vperis nychtbouris (heiring hir and hir said fervand gif pe spräche and cry⁵) had nocht cum, with diligence, and releiuit hir furth of his cruell grippis. BE occasioun quhairrof, the said Katharene was led hame to hir awin hous, quhairin scho hes layne continuallie bedfast senfyne, in grit pane and dollour, vnder pe cuir of Doctouris and chirurganes ; sa that, vpon the xxj day of May lastbypast, or pairby, scho pairtit with ane deid bairne ; and scho hir selff hes bene, and as

¹ Only. ² Street, way. ³ The numerous narrow alleys running downwards from the north and south sides of the High-street of Edinburgh, are termed *closes* ; the close-heid signifies the entrance to one of these passages.

⁴ Tore her curtche, a sort of cap or head-dress. Old Fr. ⁵ Give the alarm ; the hue and cry.

3it is, in grit haizard and danger of hir lyfe: Committing pairthrow manifest villany, vnder nycht, within the said burch of Edinburghe, vpone þe Hie-streit pairof, quhilk fould be ane saiftie and place of refudge to all honest men and wemen; speciallie, to the honest nychtbouris, inhabitantis pairintill; Lyk as, þe said Johnne Broune is airt and pairt of the samyn villany and barbarus cryme: As also, is airt and pairt of the Slauchter and distructione of the said Katharenes infant bairne, quhairwith scho hes pairtit, be occasionne foirsaid. For the quhilkis, the said Johnne aucht and fould be pwneischet, conforme to the lawis of þis realme, as ane brigane¹ and Murtherour vnder nycht; to the terroure and exampill of vtheris to commit the lyk, in tyme cuming.

It is allegit that the Summondis is nocht relevant; in respect the fact lybellit is only ane naikit intentioun. It is anfuerit be the persfwer, that he conioynis the haill crymes lybellit togidder, to be tryit be the Assyse.

THE JUSTICE ffindis the summondis relevant, in respect of the anfuer.

It is forder alledgit, that this matter can nocht pass to ane Assyse, in respect it is tryit alreddie, befor the Secreit Counfall, and ane Sentence gevin thairin alreddie. It is anfuerit be the persfwar, that the Secreit Counfall ar nocht Judges Criminall, and that na Precognition tane be thame can be in preiudice of decisioun to the Justice, to put crymes to ane Assyse; as was laitlie decydit betuix Johnnestoune of Newbie contrair Williame Maxwall.²

THE JUSTICE remittis this matter to the tryall of ane Assyse.

VERDICT. The Assyse, be the mouth of Dauid Fairlie, merchand burges of Edinburgh, fand, pronuncet and declairit the said Johnne Broune to be ffylet, culpable and convict of the Invaiding and molesting of the said Katharene Rae, vnder nycht; committit the tyme foirsaid, contenit in the said Dittay: And declairit the said Johnne to be Clene, innocent and acquit of the Murthour and distruction of the said infant bairne, committit the tyme foirsaid; in respect thair was nathing productit for verifeing thairof: Quhairupoun aither of the saidis parteis askit instrumentis.³

[*Mr Williame Hairt, Justice-Depute.*]

**Hamesucken — Besieging the Tower of Newbie — Shooting Pistolets
— Taking Captive, &c.**

Jun. 21.—WILLIAME MAXWALL of Gribtoun, Barbara Johnnestoune, his spous, Elizabeth Johnnestoune, relict of vmq^{le} Johnne Johnnestoune, appeirand of Newbie (mother to the said Barbara.)

Dilaittit, accusit and persfuit, be vertew of THE DITTAY following, viz.

FORSAMEKILL as, albeit be dyuerse guid Actis of Parliamant and Secreit Counfall, *respectiue*, oure fouerane lord hes prohibeit and dischargit the beiring and weiring of hagbuttis and pistolettis vnder certane panes mentionet in the saidis Actis; nochtwithstanding, it is of treuth, that sic is the wicket dispositioun of sum perfonis, quha preferring thair awin inordinat appetite and revenge, to the dew reuerence and obedience of his hienes saidis lawis, thay and thair domestik servandis daylie and conti-

¹ Fr. brigand.

² See Jun. 21, the following Case.

³ The Sentences are not Recorded.

huallie beiris and weiris hagbuttis and pistolettis, as thair ordiner and accufternet wappones; of fet purpois and prouisioun to put thair vngodlie determinatioun to executioun, aganis sic of his hienes peceable subiectis, aganis quhom thay beir ony querrell or haittrent: As namelie, the saidis Williame Maxwall of Gribtoun, Barbara Johnnestoun his spous, and Elizabeth Stewart hir mother, haifing, this langtyme bygane, borne ane secreit and hid malice aganis the said Robert Johnnestoun of Newbie, in respect of the dependance of certaine actiones, depending befor the Lordis of Counfall and Seffion, movet be aither pairtie aganis vtheris; and speciallie, ane actioun of Reduction intentit, and the Summondis thair of lauchfullie execute, at the instance of the said Robert aganis the said Williame Maxwall, Barbara his spous, and the said Elizabeth hir mother, for Reductioun of the Retour of vmq^{le} Johnne Johnnestoun of Newbie, that last deceiffit, spous to the said Elizabeth, and for Reductioun of his Seafing following thairupoun, and of certane vtheris pretendit Infeftmentis, allegit maid be him to the said Elizabeth his spous, and to the said Barbara his dochter: And ane vther actioun and cause, persewit be the said Barbara and the said William hir spous, for his entreis, aganis the said Robert Johnnestoun, for randerig to thame the Toure and ffortalice of Newbie: And the samyn actioun being oft and dyuerse tymes callit, in presence of the saidis Lordis, and dyuerse guid exceptiones and defens-
fis proponit be the said Robert and his procuratouris in his name, quhilk as yit ar vndiscuffit, the saidis Williame, Barbara his spous, and the said Elizabeth hir mother, nocht being content to abyde the event of the saidis Lordis Judicatorie in the saidis caussis, bot rather to contempne our fouerane lordis authoritie and lawis, and to tak Justice at thair awin handis, as gif thair war na ordiner justice within this realme; thay, during the saidis dependances, and estir raising and lauchfull executioun of the saidis Summondis, in maner aboue writtin, haifing consultit and devysit with Johnne McBrair, Robert Johnnestoun callit of Brwme, seruitouris to the said Williame Maxwall, Thomas Jardane callit of Birnok, Eduard Maxwall, brother to the Laird of Conhath, and Thomas Jardane, servitour to Johnne Lord Hereifs; the saidis fyve persones immediatlie befor namet, being all bodin in feir of weir,¹ with jakis, suordis, steilbonnetis, lang gwnes, pistolettis, and vtheris wappones *invasiue*, prohibeit to be worne in maner foirfaid, laitlie, vpon the xix day of Merche lastbypast, be directioun, causing, command, hounding and convoy, reffett, assistance and rathabitoun of the saidis Williame Maxwall, Barbara Johnnestoun his spous, and Elizabeth Stewart hir mother, come ryding to the place of Neubie, perten-
ting to the said Robert Johnnestoun, and being in his peceable possessioun, than, and dyuerse monethis ofbefoir; quhair the said Robert was deidlie feik for the tyme: Estir thay had send bak thair horsis fra thame, quhairby thair being thair sould nocht be knawin, thay privatlie, be the moyane of the said Elizabeth Stewart and Barbara Johnnestoun, convoyit thame selffis, vnder clud and silence of nycht, within the laiche² hall and houffis of the said place of Neubie, inhabeit be the said Elizabeth Stewart and Barbara Johnnestoun, be quhome thay war reffett within the saidis houffis; and thair, the saidis persones, awaiting thair awin opportunitie, be way of foirthocht fellony and hamesukin, and vsurping vpon thame our fouerane lordis authoritie, befaiget and inuidit the said Tour,³ thay being in the said Robert Johnnestounis possessioun, as sone and appeirand air mail and of tailzie⁴ to the said vmq^{le} Johnne Johnnestoun of Neubie, his faither: And the saidis fyve persones maist schamefullie, crewallie and vnmercifullie preiffand, be violence and vnlawfull force, to asslage and tak the said Tour and ffortalice, inuidit and hurt the said Eduard Johnnestoun, brother to the said Robert, and maist crewallie schot him throw the body with ane pistolet; and also maist crewallie inuidit, hurt and woundit the said Airthour Johnnestoun, servand to the said Robert, in the face, with the schot of ane vther pistolet; to the effusioun of thair bluid in grit quantitie, thay being in cumpany and seruice with the said Robert, and in defence of him and his Tour and ffortalice of Newbie; and than, per force, be way of ffoirthocht fellony and Hamesukkin, as said is, and vsurpeand and takand vpon thame our fouerane lordis authoritie, thay enterit within the said Robertis Tour and ffortalice of New-

¹ In warlike array.² Low or under-hall.³ Tower.⁴ Son and apparent heir-male and of entail.

bie, and tuik the said Robert and the said Airthour, his fervand, captiues and priffoneris; the said Robert being lyand deidlie feik and bedfast within the samyn; crewallie invaidit thame, band thair handis behind thair bakis, and violentlie and perforce schot¹ thame and thair haill cumpanie furth of the said Tour, thay being our fouerane lordis frie subiectis. QUHILKIS crewall, schamefull and abhominable crymes aboue writtin, viz. Vfurpatione of our fouerane lordis auctoritie, Hamefukkin, Beiring and weiring of pistolettis, and remanent Invasiones, factis and deidis *respectiue* aboue specifeit, was done and committit be the foirfaidis fyve persones, of the speciall command, hounding out, directione, consulting, devyse, reffett, assistance and ratihabitione of the saidis Williame Maxwell, Barbara Johnnestoun his spous, and the said Elizabeth his moder: And thairby, thay, and everie ane of thame, ar airt, pairt, red and counfall, and ratiefearis of the saidis haill crymes aboue expremitt, and everie ane of thame, viz. Vfurpation of our fouerane lordis authoritie and Befageing and taking of the said hous, Convocation of his Maiesteis leigis, Beiring and weiring of hagbuttis and pistolettis, contrair the tennour of the saidis Actis, Invaiding, schuiting, hurting and wounding of his hienes frie lieges and subiectis, and Invaiding and taking of thame captiues and priffoneris, be way of Hamefukkin and ffoirthocht ffellony, binding of thair handis behind thair bakis, schuiting and expelling of thame violentlie furth of thair awin houffis, but² Commissioun; thay being our fouerane lordis frie leigis and subiectis, in maner foirfaid.

PERSEWARIS.

Robert Johnnestoune of Newbie, Eduard Johnnestoune his brother, Airthour Johnnestoune, fervand to the Laird of Newbie, Sir Tho^s Hammiltoune of Monkland, kny^t, Aduocat to our fouerane lord.

PRELOCUTOURIS for the pannell.

The Laird of Gairleis,

The Laird of Hemptseild,

Andro Ker of Fentoun,

Mr Alexander King,

Mr Robert Lyntoun,

James King.

It is allegit be Mr Alexander King, prelocutour for Barbara Johnnestoun, that na proces can be led aganis hir, becaus scho being convenit ofbefoir, befor the Lordis of Secreit Counfall, vpone the haill contentis of this lybell, factis and deidis lybellit, at the instance of my Lord Aduocat and Robert Johnnestoune, perfeweris, scho is affoilzeit³ *simpliciter*, be Decreit of the Lordis of Secreit Counfall; and that thairefter the said Lybell was admittit to the said Aduocat and Robert Johnnestone's probatioun, and thai succumbit⁴ thairintill: For verificatioun quhairof, thay producet the said Decreet-absoluitour, of the dait, at Edinburgh, the secund Maij last.—It is anfuerit be the perfeweris, the allegiance aucht to be repellit, becaus nathing done befor the Secreit Counfall, ather be Sentence absoluitour or condampnitour can stay the Justice to proceed in ane Criminall cause; as was practiket⁵ betuix Eduard Johnnestoune Younger and Johnne Broune:⁶ And gif the Counfall can nocht judge vpone sa heich crymes as ar lybellit, or geve ony penall sentence vpone the samyn, conforme to the law, thair precognitioun can nocht stay the proceeding of the Justice. Last, the summondis befor the Counfall was fund relevant, and the absoluitour proceedit vpone nocht probatioun; and as crymes capitall can nocht be provin be Wit-

¹ Thrust, ejected.

² Without.

³ Absolved, acquitted, freed.

⁴ Yielded.

⁵ Decided,

made matter of precedent or practise.

⁶ See the preceding Case, Jun. 18 and 27, 1605.

nesses, bot be the tryell of an Assyse, sa the nocht probatioune of the samyn, befoir the Counfall, can nocht stay the same to pas to ane Assyse.

It is anfuerit be the pannell, that the absoluitour befoir the Lordis of Secreit Counfall will stay the Justice of ony forder proceeding: And as to the Practique betuix Eduard Johnnestoune and Johnne Broune, the samyn militatis nathing in this caice. That in that caice, Johnne Broune was convenit befoir the Counfall, for the wrangus Invaiding of Eduard Johnnestoune's wyfe, vnder clud and silence of nycht; and the proces befoir the Justice was ane persute, persewit at the instance of Johnne Broune aganis Eduard Johnnestoune, for Mutilatioune; sua that the Decreit of Secreit Counfall nawayis met that persute befoir the Justice: And also, as for the authoritie and power of the Lordis of Secreit Counfall, the perseweris can nevir be hard to oppone the samyn; in respect thay autorizet that judgement, callit and persewit befoir thame, as Judge-ordiner, for the factis lybellit, led and deducet probatioune eftir that the summondis was fund relevant in their fauouris, and thaireftir succumbit, as said is; and thairby, can nevir be hard to impunge the said Decreit and sentence. In respect quhairof, the allegiance standis relevant.—The Aduocat adheris to his former anfuer.

The Justice findis proces. Quhairupone the Aduocat askis instrumentis.

It is forder allegit, that we ar nocht disputing heir vpone the authoritie of the Counfall or of the Justice, bot insistis only on this poynt, that thai ar maid fré of the fact afoir the Counfall.—It is anfuerit be the Aduocat, he is nather acquit be ane Assyse, nather yit be ane Remissioune.

The Justice Repellis theallegiance, *locoquo*; reserving the pannelis informatiounethairof to the Assyse.—The Aduocat takis instrumentis of the Justice interlocutour.

It is allegit that the Summondis is nocht relevant, in respect that the ffactis and deidis lybellit ar nocht capitall, and can nocht be put to the knowlege of ane Assyse.—The Aduocat anfueris, aucht to be repellit, in respect of the Summondis.

The Justice findis the summondis relevant; and ordanis the samyn to be put to the knowlege of ane Assyse.—The Aduocat takis instrumentis of the Interlocutour.

ASSISA.

George Hadden of that Ilk,	Robert Frenche younger of	William Hay of Lynplum,
Thomas Portious of Glenkirk,	Frencheland,	Johnne Tennant of Kairnis,
Willame Twedie of the Wrae,	James Flemyng of Spittel,	Willame Sincler of Roisling,
Mr Alex ^r Menzies of Culterrawis,	James Crawford, goldsmyth, bur-	George Hay of Monktonne,
Patrik Lanctoun elder of Erles-	ges of Edinburgh,	Ja ^s Cranstoun of Monktonhall,
hauch,	Alex ^r Fairlie elder of Braid,	 Sydferff of Ruchlaw.

The Aduocat takis instrumentis of the sweiring of the Assyse; and Protestis for Wilfull Errour, gif thay Acquit.

The Pannell repeitis the allegiance proponit of befoir to the Assyse; and in respect that the Decreit of Secreit Counfall gevin aganis the perseweris, efter probatioun

led be thame, *in foro contradictorio*, vpoun thair awin perfute, Barbara Johnestoune is declairit ffrie of the haill factis lybellit, the Affyse can nawayis ffyle hir. As lykwyis, Williame Maxwell and Elizabeth Steuart are ffund Clene and innocent of the deidis and factis lybellit; that the samyn was nocht done of thair causing, command, (or) assistance, but only of ratihabitoun,¹ eftir the committing of the factis: That thai can nawayis be convict, be the Affyse, of the deidis lybellit, as done be thair causing, command and assistance, airt and pairt: And gif thai be clanget, as thai man be of necessitie, of the premiffis, thay can nawayis be convict of this lybell, because ratihabitoun *per se* nather is relevant, nor induces a cryme: And forder, befor the Stewart² of Annandaill, the haill pannel being accuset, as culpable of the factis and deidis lybellit, and thairfoir to haif incurrit the vnlawis for schedding of bluid; thay ar Clanget be ane condigne Inqueist, and fund innocent, baith of the bluid and bludwyte;³ as the Decreit, heirwith producet, beiris. In respect quhairof, the Affyse nawayis can ffyle or convict thame; and in cais thay do, Protestis for manifest and Wilfull Errour.

The Aduocat, for informatioun of the Affyse, and to the effect thay be nocht led and inducet to commit Errour, acceptis the Decreit of Secreit Counfall producet be the pannell, togidder with the Testimoniall of the clangeing of the pannell befor the Stewart of Annandaill, in sa far as the samyn makis for the persewaris, and na vtherwayis: And first, allegis that the summondis persewit befor the Lordis of Secreit Counfall was ffund relevant be the Lordis thairrof, and the samyn ffund provin, in effect and substance, aganis the said Williame Maxwell and Elizabeth Stewart; and gif ony appeirance be of absolutour gevin in fauouris of ony of the defenderis, the samyn proceidit vpoun the Depositiones of the Witneses; becaus Depositiones of Witneses can haif na forder fayth nor⁴ thay depone to knaw of thair certane knowlege; and thairfoir, that quhilk is nocht deponit be the Witnesis to be done, in thair presence, sicht and certane knowlege, is nocht ffund provin, quhairupoun absolutour may be gevin: Bot becaus crymes, as thai ar vnavowabill of thame selffis, sa thai are devyset and done secreitlie, in sic maner as na Witnesis can knaw the samyn; and thairfoir, can nocht depone thairintill; thairfoir, be the lawis of this cuntrie, it is provydit, that crymes neidis nocht, nor may nocht be provin be Witnesis, bot are referrit to the knowlege of ane suorne Affyse; quhais determinatioun, according as thay ar perswadit in thair consciences, is ane sufficient warrand to thame selfis, and ane iust cause of convictioun of the pannell; and it is sufficient to thame to convict, gif thai find nocht cleirlye, thay can iustlie quyte:⁵ And thairfoir, albeit⁶ the Witneses knew nathing, that was first vsed, and thairby thair Depositiones

¹ Confirmation or approval; from the Law Lat. *ratihabere*.
 bloodwit was a fine paid for the shedding of blood.

⁴ Than.

² Steward, *Senescallus*.

⁵ Acquit.

³ The

⁶ Although.

gaif occasioun of sum absolutour, for laik of probatioun be thame; yit that warrandis nocht the Assyse; bot thai man ather ffyle, or commit Wilfull Errour, in respect of the notorietie of this Dittay; to witt, that the House of Neubie was tane, in maner contenit in the Summondis, be the persones quha for the samyn hes bene continuallie fugitiue senfyne; tua of thame being Williame Maxwellis seruands, and the vther thre his speciall freindis, haifing na entreis nather to tak nor keip the house for thame selffis, on thair awin respect, bot only at the desyre and be the causing and to the behuif of the said Williame and haill remanent defenderis: Quhilkis defenderis, pretending rycht to the said house and landis; as the verificatioun of tua feuerall dependances for the samyn befor the Lordis of Seffioun, heirwith producet, beiris. The saidis defenderis, expresse aganis the Act of Parliament maid anent the slauchter and trubbilling of parteis, in persute and defence of thair actiones, being the 219 of the Kingis xiiij Parliament, and vtheris Actis maid thairanent, intyset and causet the saidis ffugitiues violently to Assage and tak the said house, persew, invaid and demane¹ the said Robert Johnestoun and his assistaris being thairintill, in maner contenit in the summondis; quhilk being committit be thame, thay nather pretendit nor retenit ony richt or possessioun thair of; bot only keipit the samyn, quhill² Williame Maxwell come to thame in all haist; to quhais behuif thay haifing tane the said house, thay incontinent delyuerit the samyn to him; quha send thame away vpone his awin horse, and his freindis that come with him. And as to the Gentilwomen, the said fact being lykwayis done to thair behuif, thay resset and hid the committeris, being of intentioun and preparatioun to commit the samyn; and thai ran out of the ane into the vther; and thairby suppryset the said Tour, vpone the occasioun, to the behuif, and of the ratificatioun foirsaid: Lykas, be the Decreit, it is fund to be done of the ratificatioun of the said Williame Maxwell and Elizabeth Stewart; quhilk ratihabitoun, of Law, in ane matter done to the behuiff of ony man, is compairit and pwneischet as ane preceiding command, be the first Law *de vi et vi armata*, in the xiiij paragraph, in thir wordis: ‘*rectius enim dicitur in maleficio ratihabitonem mandato comparari*’; to wit, it is richtlie said, that ratihabitoun in crymes is richtlie comparet to ane preceiding command: And the thrid Law of the said Tit. in the tent paragraph, in thir wordis, ‘*cum procurator armatus venit, et ipse dominus armis dejicisse videtur, siue mandavit, siue ut Julianus ait, ratum habuit*’; that is to say, quhan ane mannis fervand cumis airmet, his maister is reput to haif expellit or reiectit with airmes, quhither he commandit, or, as Julian sayis, he ratifeit the samyn. And thairfoir, seing thir fervandis and freindis come airmet and did this violent deid, be ratihabitoun of the pannell, togidder with the

¹ Treat, use, handle.

² Until.

Decreit finding the samyn, makis thame giltie thairof. Lyk as, the Act 151 of the Kingis 12 Parliament, makis ane criminall Summondis to be relevant, gif it beiris that the defenderis ar airt and pairt of ane relevant cryme; and it is trew that that cryme is fund relevant be the Justice, and remittit to the Assyse; and the notorietie of the pannellis being airt and pairt thairof is befor deducet, seing thair knowlege of the said fact, thair benifeit rypet¹ thairby, and ratihabitoune thairof, is manifest. And as to the clengeing producet, the samyn makis aganis the producer; becaus the perseweris, as pairtie grevit, and the Kingis Aduocat, for his hienes entreis, being necessar and only parteis, and the defenderis knawing thair awin giltines, purchest and deducet ane led Tryell, befor thair awin freindis, being bayth Judges and Assysouris; na pairtie haifing entreis being present nor wairnit thairto. In respect quhairof, gif the Assyse Clenge, the perseweris protestis for Wilfull Errour.—The Aduocat askit instrumentis of the sweiring of the Dittay be the perseweris, in presens of the Assyse; as lykwyis the taiknis² producet, also fuorne be thame.

It is ansuerit for the pannell, to the alledgeance immediatlie preceiding, that the Aduocat wald haif the Assyse, quha kennis³ nathing of the factis and deidis lybellit, bot the commone bruit,⁴ and be thair awin allegeance, to ffyle, nochtwithstanding that the multitude of the Witnesfes producet be the perseweris could nawayis preve the fact; thay being Witnesfes, duelleris vpone the landis, and round about the samyn; and ane grit number of thame come to the deid, and yit thay wad nocht tak it vpone thair consciences to depone ony thing by⁵ the verritie; sua, the Assyse, quha kennis far less, can nocht convict vtherwyis nor⁶ accoirding to the first probatioun. As to the secund pairt of the allegeance, the samyn contenis only ane repetitioun of the Dittay and taikinis, and mereitis na forder ansuer nor is ansuerit ofbefoir. As to the thrid pairt, beiring that Ratihabitoune *equo paratur mandato*, and allegeing the first and thrid lawis *de vi et vi armata*; to that, it is ansuerit, that as, *in criminalibus*, Ratihabitoune is never relevant *per se*, sua the samyn can be comptit na cryme, nor na grund to convict the pannell; ffor in crymes, thair is thre thingis to be confidderit, airt, pairt, and ratihabitoune: *Airt*, is command, or devyse, or counsell of doing of the deid; quhairof we ar declarit innocent: *Pairt*, is participant of the ffact; quhairof we ar lykwayis declairit innocent: *Ratihabitoune*, is allowing of the ffact, eftir the samyn be committit; quhilk is nawayis drawin bak to ony of the premiffes, in criminall matteris: And albeit the said Williame had allowit in taking of the house, eftir it was tane and the deid committit, yit that makis thame nocht giltie of the ffactis or deidis committit be the personis takeris of the house, the tyme befor or eftir the taking thairof. And seing the Witnesfes

¹ Reaped. ² Tokens, evidence. ³ Knows. ⁴ Excepting the common report or talk of the country. Fr. *bruit*. ⁵ Past, besides. ⁶ Than.

examinat, be thair grit ayth, hes maid the pannell Innocent and clene of the ffactis lybellit; as lykwayis, thay ar declairit Innocent, be ane condigne fuorne Inqueist, befoir thair Judge-ordiner; the Assyse can nawayis ffyle thame, except thay commit manifest Errour, and declair contrair to the probatioun alreddie led and deducet, and depone contrair to thair awin conscience and knowledge.

SPECIAL VERDICT of the *Assyse*.

THE ASSYSE removet altogidder furth of Court to pe Counfall-hous, quhair pai, be pluralitie of voittis, electit and choisit the said Alexander Fairlie of Braid in¹ Chancellor of the said Assyse; and pairefter reffonit and voittit vpone the haill heidis and poyntis of the said Dittay; and being ryplie and at lenth advyset pairwith, and with the haill taikines and writtis producet for verificatioun pair of, allegiances and answers maid, *hinc inde*, in the said matter; thay re-enterit agane in Court, quhair thay, be pe mouth of pe said Alexander Fairlie, ffand, pronuncet and declairit the saidis Williame Maxwell, Barbara Johnnestoun his spous, and pe said Elizabeth Stewart hir moper, to be ffylet, culpabill and convict, as followis, viz. THE said *Williame Maxwell* of Gribtoun, to be ffylet, culpabill and convict off airt and pairt with the saidis Eduard Maxwell, broper to pe Laird of Couhaithe, Thomas Jardane callit of Birnok, James Jardane, servand to the said Johnne Lord Hereis, Johnne McBrair and Robert Johnnestoun callit of Brwme, of the violent taking of the said Tour and ffortalice of Newbie; committit be the saidis fyve perfonis, the tyme contenit in the said Dittay. THE said *Elizabeth Stewart*, to be ffylet, culpable and convict off pe reffet of the saidis fyve perfonis, quha committit pe crymes specifeit in the said Dittay, and of the Ratihabitoun of pe violent taking of pe said Tour and ffortalice of Newbie: AND pe said *Barbara Johnnestoun* to be ffylet, culpable and convict of the Ratihabitoun of the violent taking of pe said Tour and ffortalice of Newbie, be pe saidis fyve perfonis takeris pair of. AND siclyk, ffand and declairit pe saidis Williame Maxwell, Barbara Johnnestoun his spous, and pe said Elizabeth Stewart hir moper, to be Clene, Innocent and Acquit of the haill remanent crymes and poyntis contenit in the foirsaid Dittay, viz. of airt and pairt of pe vsurpatioun of our souerane lordis authoritie, in besageing of the said hous, convocatioun of his Maiesteis leigis, beiring and weiring of hagbuttis and pistolettis, contrair the tennour of the Actis of Parliament, Invaiding, schuitting, hurting and wounding of pe saidis Robert Johnnestoun, Eduard Johnnestoun and Airthour Johnnestoun, his hienes frie subiectis; and Invaiding and taking of thame captiues and priffoneris, be way of Hamefukkin and ffoirthocht ffellonie, binding of pair handis behind pair bakis, and schuitting and expelling thame violentlie furthe of the house and ffortalice foirsaid; committit be pe saidis fyve perfonis, takeris pair of, pe tyme and in maner aboue writtin, mentionet in the said Dittay.

Jun. 25.—The Justice continued the case to the 28th of Junij. ‘Plegio, Alexandro Stewart de Gairleis, sub pena in Acto predict.’

Jun. 28.—Alexander Stewart of Gairleis become pledge and fouertie for Williame Maxwell of Gribtoun, &c. to enter and present thame befoir the Justice and his deputis, in the Tolbuith of Edinburgh, the thrid day of Julij nixtocum, in the hour of cause, to heir dome pronuncet vpone thame; vnder the panes following, viz. ffor the said Williame, vnder the pane of V^m li. (£5000,) and for the saidis Elizabeth and Barbara coniunctlie, vnder the pane of vther fyve thousand pundis.

Jul. 3.—Alexander Stewart of Garleis of new becomes pledge and fouertie, that thai and ilk ane of thame fall compeir befoir the Justice or his deputes,

¹ To the office of.

quhair evir thay or ony of thame fall be charget, vpone xv dayis wairning, to heir and fie dome pronuncet, &c. ilk ane of thame vnder the pane of tua thousand merkis. Maxwell binds himself to 'warrand releif and keip ikaythles' the said Alexander Stewart.

Slaughter.

Jun. 26.—JAMES GLEDSTANES of that Ilk.

Dilaitit ffor airt and pairt of the Slauchter of vmq^{le} Thomas Peiblis, burges of Peiblis; committit in the moneth of Februare, I^mV^c.lxj yeiris, vpone the landis of Kaidmure, besyde the said burgh of Peiblis; vpone set purpois, pro-uifioune and ffoirthocht ffellony.

PERSEWERIS.

Thomas and Johnne Peiblis, as fones; Johnne and Daid Peiblis, fones to the said Thomas, (Junior.)
PRELOCUTORIS for the pannell, Laurence Scott.

The pannell tuik him to our fouerane lordis Respett, producet be him, vnder his Maiesteis Priuie Seill, of the dait the . . . day of Junij instant.

It is allegit be the perseweris, that the Respett producet be the pannell aucht nocht to be admittit, in respect the samyn is grantit contrair to the Act of Parliament; na Letter of Slanes being grantit be thame, for Afflythement of the partie.—It is anfuert be the pannell, the allegiance aucht to be Repellit, in respect of the Respett; and that thai ar willing to fatisfie, conforme to the lawis of this realme, and offeris Cautioun to that effect.—Quhilk Respett the Justice admittit, and ordanit the said James to find cautioun, &c.: Lyk as, Johnne Gledstanes of Wynningtoun-hauch and Mr Johnne Rutherford, bailzie and burges of Jedburgh, become bundin and obleift, coniunctlie and feuerallie with the said James Gladstanes of that Ilk, his selff, to fatisfie the partie for the Slauchter of the said vmq^{le} Thomas Peiblis.

Murder under Trust.

Jun. 27.—JAMES KYNNAIRD, sone to the Laird of Incheture,¹ Williame Haitlie in Balgawie, Williame Kynnaird, sone to the Laird of Kynnaird.

Dilaitit, accuset and persewit be Siluester Chopman in Kinclevin, conforme to our fouerane lordis Letteris, raifit and direct at the instance of Marioun Chopman, as mother, Margaret Scherp, as sifter, the said Siluester Chopman and Thomas Chopman in Ragolny, as mother-brether,² with the remanent kyn and freindis of vmq^{le} Johnne Scherpe, feruitour to the Laird of Ruthven, aganis the saidis Williame, &c. and als aganis James Ramsay in Flacraig-mylne; as thay that war culpable and giltie of the crymes contenit in the DITTAY following.

¹ Vmq^{le} Patoun Kynnaird.

² Maternal uncles, mother's brothers.

FORSAMEKILL as the saidis Williame Kynnaird, &c. haifing laitlie, vpone the ffyft day of July, the yeir of God, I^m. fax hundreth and thre yeiris, convenit thame felffis within the toun of Rait, quhair the said vmq^{le} Johnne Scharp was for the tyme, attending¹ the cuming of certane his freindis and gentilmen that war at the buriall of the Laird of Bandane, and doand vtheris his lauchfull effairis and buffines, lipning for na harme, iniurie or perfute of ony perfones, bot to haif levit vnder Godis peax and our fouerane lordis: And thair, in all hamelie and freindlie maner, come to the said vmq^{le} Johnne, and requeistit him to pas with thame to the drink; quha, vpone meir simplicitie and benevolence, past to ane drinking hous with thame, and haifing fallin in reffoning with the said vmq^{le} Johnne, anent sum speiches that past betuix him and the said James Ramsay in Flacraig-mylne a few dayis befor; the saidis perfones in the meane tyme directit one of thair companie for the said James Ramsay, desyreing him to cum to thame, and thay sould affist him to be revenget on the said vmq^{le} Johnne: At quhais cuming, the foirsaidis perfones, togidder with the said James Ramsay, being all bodin in feir of weir, with fuordis, qubingeris, gantilletis, plait-slevis and vtheris wappones, *inuafus*, incontrair the tennour of the Actis of Parliament, sett vpone the said vmq^{le} Johnne Scherp, vnder trest, and maist trateruslie and barbaruslie, everie ane of thame with thair drawin wappones foirsaidis, persewit him for his slauchter; and as murthereris, thevis and brigganis, haifing drawin the said vmq^{le} Johnne to drink, as said is, strak the said vmq^{le} Johnne in dyuerse pairtis of his body, and gaif him nyne bludie and deidlie woundis, viz. thre straikis in his heid, thre in his bak, ane throw his wambe, ane vther vnder his okster, and tua vpone his schoulder blaid: Off the qubilkis straikis and crewall woundis the said vmq^{le} Johnne immediatlíe deceiffit amangis thair handis. And the saidis perfones, and ilk ane of thame, ar airt and pairt of the said crewall Murthour and Slauchter, committit vnder trest, vpone set purpois, prouisioun and foirthocht felony; in hie and manifest contempt of our fouerane lord, his hienes auctoritie and lawis; and to the evill exampill of vtheris, his Maiesteis obedient subiectis, to commit the lyk schamefull and barbarus crueltie and Murthour, in tymes cuming, gif the foirsaidis perfones committeris thair of be sufferit to remane vnpwneifchet.

VERDICT. Lauchfull tyme of day biddin, and (the perseweris) nocht compeirand,² the Justice-depute patt the saidis Williame, &c. to the knowledge of ane Assyse, who all in ane voce, be the mouth of Robert Hog in Gally, sumtyme fervand to my Lord Marschell, chancellor, ffand the saidis Williame, &c. to be Clene, innocent and acquit of airt and pairt of the felloun and crewall Slauchter of the said vmq^{le} Johnne Scherp, and haill circumstances aboue writtin. Quhair-upone the saidis defenderis askit instrumentis.

[*Mr Williame Hairt and Mr Williame Borthuik, Justices-Deputes.*]

Masterful Theft — Stouthreis — Lifting of Cattle, &c.

Jun. 28.—JOHNNE ELLOTE of Copschaw, Robert Ellote, his sone, Johnne Rutledge and Adam Rakefe, fervandis to the said Johnne.

Being enterit on pannell, quha war summond be vertew of our fouerane lordis letteris, purchest at the instance of Hectour Trumbill of Wauchope, Thomas Trumbill, younger of Wauchope, George Trumbill, secund lauchfull sone to the said Hectour, George Trumbill in Wauchope, Thomas Scheill thair, Hob Olipher thair, Harie Trumbill thair, Pait Trumbill thair, Gawin Trumbill in Bullerwall,

¹ Waiting. Fr. *attender*. ² The matter had been compromised with the relations of the deceased, &c. and by the absence of the pursuer, and no evidence being produced, the Jury acquitted the pannel.

Adame Trumbill in Wauchope, and Eduard Scheill in Langhauch : And perfewit be the saidis Thomas T. younger, and George his brother, for thame selffis, and in name and behalf of the said Hectour Trumbill of Wauchope thair fader, and haill remanent perfoness aboue writtin, thair tennentis, of the crymes following.

DITTAY against the Pannels.

FORSAMEKILL as the saidis Johnne Ellote, &c. with thair complices, to the number of ane Hundreth perfoness, allwell brokin-men and borderaris of Ingland, as of Scotland, all bodin in feir of weir, with jakis, speiris, steil-bonnettis, lances, lang-hagbuttis, daggis and pistolettis, expresse prohibeit to be borne, worne, vsed or schote with, be the Actis of Parliament, laitlie, in the moneth of September, the yeir of God, I^m. sax hundreth and tua yeiris, come opinlie, in the day lycht, to the landis of Wauchope; and thair, be way of Maisterfull thift and Stouth-reif, staw, rest and away-tuik, of the saidis landis, fourscor of ky and oxin, ane hundreth scheip, and tuelf horse and meiris, pertening to the saidis perfeweris; had and convoyit the samyn away with thame, and disponit thairupoun at thair pleasour: And thay and ilk ane of thame ar airt and pairt of the saidis crymes of Thift and Stouth-reif; ffor the quhilk thay aucht and fould be pwneisheit, conforme to the lawis of this realme, in exampill of vtheris.

PERSEWERIS, Thomas Trumbill, younger of Wauchope, George Trumbill, his brother.

PRELOCUTORIS for the pannell, Mr Alexander King, Robert Elliot, Mr Thomas Henderfoune.

The perfeweris protestis for Wilfull Errour, in caice thay acquit; in respect of the notorietie of the fact, and that thay haif gewin thair aithes thairvpoun.

Hectour Trumbill, elder, and the remainder of the pursuers, find Robert Home, younger of the Heuch, as cautioner, that they shall ratify whatever Thomas and George Trumbill do in their names, in this perfuit; and 'William Erle of Angus band and obleist him, his airis, executouris and successouris to warrand, releif and keip skaythles the said Robert Home, his airis, executouris and assignais, of his cautionrie foirsaid, and of all danger, perrell and expenssis that he may incur thairthrow.'

VERDICT. The Assyse, be the mouth of Robert Wauch of Keip, chancellor, find the saidis perfoness to be Cleane, innocent and acquit, &c. Quhairupoun the saidis perfoness on pannell askit instrumentis.

[*Mr Williame Hairi, Justice-Depute.*]

Mutilation and Demembration.

Jul. 2.—JOHNE HAMMILTOUNE, Persone of Crawford-Johnne, Airthour Colquhoun, than his servand, now in Kirmure, Gawin Murray of Vdstounheid.

Dilaitt of airt and pairt of the Hurting, Wounding and Mutilatioun of Alexander Lokhart, Tutour of Wikketschaw, of his left hand, and demembring of him of his mid-finger, nerrest his littill finger, of his said hand: And beiring and weiring of pistolettis; committit in Apryle, I^m.V^c.lxxxv yeiris.

Robert Chancellor of Sheilhill become pledge and fouertie, that thai and ilk ane of thame fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of Lanerk, or soner, vpone xv dayis wairning, to vnderly the law, &c.

Slaughter.

Jul. 3.—CHAIRLES CARUTHERIS of Warrambie.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Roger Gordoun in Lochinkitt.

PERSEWER, Roger Gordoune, brother-son.

Continued to the air of ' Annandaill, tertio Itineris, (vel super premonitione,) xv dierum.'

Forcing (Rape.)

Jul. 3.—WILLIAME BELL, workman in Edinburgh.

Dilaitit, accuset and persewit be Jonet Falconer in Karingtoun, ffor the fforce-ing of hir aganis hir will ; and drawing hir furth of the way at Boddorne-mure, betuix Caringtoun and Lefuaid, and abuseing hir in ane coill-pott-hoill ; scho being ane 3oung maid of tuelf 3eiris of age, or thairby, &c. ; committit the xxj day of Junij lastbypast, about tuelf houres in the day.

VERDICT. Eftir accusatioun of the said Williame Bell, be Dittay, of the saidis crymes, and verificatioun thair of be the said Williamis Depositiones ; the Assyse, be the mouth of James Ramfay in Caringtoun, chancellor, ffand, pronuncet and declairit the said W^m Bell to be ffylet, culpable and convict of the saidis crymes.

SENTENCE. To be tane to the mercait-croce of Edinburgh, and thair to be hangit vpone ane gibbet, quhill he be deid ; and all his moveabill guidis and geir to be escheit, &c.

Slaughter.

Jul. 4.—JAMES TAIT in Kelfo, brother to George Tait of Bairerfe.

Dilaitit, accuset and persewit by Williame Tait of Chirritreis, as father, Williame and Johnne Taittis, his sones, as brether, with the remanent kyn and freindis of vmq^{le} James Tait, sone to the said Williame Tait of Chirritreis, off airt and pairt of the crymes following, viz.

FORSAMEKILL as the said James Tait in Kelfo, with his complices, being all bodin in feir of weir, with fuordis, knapska-bonnettis,¹ lances and pistolettis, expresse prohibeit to be borne, worne, vsed or schot with be our fouerane lordis Actis of Parliament, in the moneth of July, the yeir of God Im.V^c. lxxxviiiij yeiris, haifing confaet ane deidlie feid, rancour and malice aganis the said vmq^{le} James Tait, come to the Grene of Chirritreis, qubair the said James was, in sober and quyet maner, &c., and thair set vpone him, and with thair pistolettis and fuordis, maist schamefullie, crewallie and vnmercifullie slew the said vmq^{le} James Tait : And the said James Tait in Kelfo is airt and pairt of the said slauchter ; committit vpone sett purpois, prouisioun and foirthocht felony, in hie and manifest contempt of our fouerane lord, &c.

PERSEWERIS, Williame Tait, Johnne Tait, as brether.

PRELOCUTOURIS for the pannell, Mr Thomas Craig, Mr Thomas Henderfoune.

VERDICT. The Assyse, (amongst whom, Thomas Ker of Pryoraw, Thomas

¹ A steel-bonnet, or skull-piece.

Tait of the Hoill, and Johnne Ryddell, appeirand of that Ilk¹) be the mouth of Johnne Mow of that Ilk, chancellor, ffand the said James Taitt in Kelfo, to be Cleane, innocent and acquit of airt and pairt of the said Slauchter. Quhairvpone he askit instrumentis.

[*Mr William Boirthuik, Justice-Depute.*]

Perjury before the Lords of Council and Session.

Jul. 10.—MR WILLIAME CARBRAITHE (GALBRAYTHE), sumtyme Minifter at Pennycuik.

Dilaitit of Periurie, in deponing contrair to his former Depositiones, eftir he was re-examinat thairupone, in the caufe perfewit be the Tennentis of Laffudane, contrair Sir Johnne Ker of Hirfell, knycht.

DITTAY against the Pannel.

FORSAMEKILL as the said Mr Williame Galbrayth, compeirand befoir the Lordis of Counfall and Sessioun, vpone the thrid day of July instant, as he that was summond to compeir befoir the saidis Lordis, to heir witneffing in the caufe perfewit be the Tennentis of Lessudane aganis Sir Johnne Ker of Hirfell, knicht, anent the reffait of certane evidentis and writtis be the said Sir Johnne, pertening to the saidis Tennentis, maid his Depositione as followis, viz.—‘MR WILLIAME GALBRAITHE, Minifter, of the age of fourtie yeiris, or thairby, *solutus*,² Deponis, that in the yeir of God Im.Vc. four-scoir fevintene yeiris (the speciall tyme and day rememberis nocht,) the Deponar, being in James Kingis chalmer in Edinburghe, quhair he presentlie duellis, quhair he saw present, for the tyme, Sir Johnne Ker of Hirfell, knicht, ane of the defenderis; Oliver Sincler of Ravinsnuk; Enoche Dewar, fervand to the said Olipher; Adame Scheill, fervand to vmq^{le} Mungo Tennent, and the said James King; and in all the saidis persones prefens, Oliuer Sincler presentit vpone the buird,³ in all thair prefens, ane littill box, coverit with ledder, of Flanderis mak;⁴ and the said Oliuer said to the said Laird of Littildane, “Thir ar the writis quhilk I promeiffit to lat 3ow fie;” and then the box being opnit, James King tuik out all the saidis evidentis furth of the said box, in all thair prefens, and red the samyn, ane be ane. *Interrogatus*, vpone the perticuler contentis and daitis of ilk ane of the saidis evidentis, rememberis perfyllie, that all the evidentis than red be the said James King maid mentioun and dispositioun of the landis of Lessuddane and Newtoun; and rememberis that ane of the saidis Chartouris bure dispositioun of the foirsaidis landis of Lessuddane and Newtoun to Airthour Sinclair, and his airis mentionat thairin; and rememberis necht of ony forder particuler contentis of the foirsaidis evidentis; bot sayis, that thair was ane grit quantitie of thame, all in parchement, and haiffand feillis: And immediatlie efter the reiding of the saidis writis, thay war all put within the said box agane; and ane Obligatioun maid and writtin in all the foirsaidis parteis prefens, beirand the said Sir Johnne Ker to be bundin and obleift to the said Oliver Sincler in the sowme of Fyve hundreth merkis money, how sone he or ony of his sould obtene the richt of the landis of Lessuddane: And this Deponer saw the said Sir Johnne Ker subscryue the said Obligatioun; and James King and this deponer subscryuit the same Obligatioun, as witnes: And at the samyn tyme, Sir Johnne Ker and his fervandis tuik away the said box with thame, and the said Oliuer Sincler tuik the said Sir Johnne Keris Band with him; and sen that tyme, the deponer newer saw ony of the foirsaidis evidentis, in ony of the defenderis handis, nor in nane vther persones handis; *reddens causa scientie*, becaus this Deponer was present, hard and saw as he deponit.—EFTIR the making of the quhilk Depositione, the said Mr Williame Galbraithe being re-examinat, vpone the fourt day

¹ The remainder are feuars.

² According to more modern form, ‘purged of malice and partial counsel.’

³ Board, table.

⁴ Manufacture, workmanship, *make*.

of July instant, in presens of my Lord Chancellor and haill remanent Lordis of Seffioune, he past fra his former Deposition, maid be him the said thrid day of July, and declairit the samyn Deposition to be altogidder ffals and vntrew in the self; and that he was nevir in James Kingis Chalmer, quhair he saw the euidentis delyuerit to Sir Johnne Ker, nather yit saw he euir Oliver Sincler and Sir Johnne Ker, togidder, in James Kingis chalmer; nor newir saw ane Obligation subscryuit be Sir Johnne Ker to Oliuer Sincler; nor nevir subscryuit the samyn as witnes: And being inquyret, quha movit him to mak the said Depositione? Declairit, that Dandie Plumbur schew him ane Obligation, extractit and subscryuit be the Clerk of Register, allegit subscryuit be Sir Johnne Ker, quhairin he was witnes, as was allegit; and bad him Depone, conforme to the Obligation: The quhilk Obligation, eftir the sicht thairof, movet the deponer to depone as he deponet; and said, that he gat only fra Dandie Plumbur his dennar, yisterday, and fourtie schillingis eftir his denner. As at mair lenth is contenit in the saidis Depositiones. Be the making of the quhilkis tua contrair Depositiones, the said Mr Williame Galbraithes hes schawin him self to be manifestlie Periuret, ffalse, and vntrew: For the quhilk Periurie and ffalsset he aucht and fould be puneischet, conforme to the Lawis of this realme, in exam-pill of vtheris.

Quhilk cryme aboue writtin, the said Mr Williame confessit to be of veritie; and offerit him selff, and become in our fouerane lord and his hienes Counfallis Will for the samyn; quhome the Justice reffaut in will. And thairfoir the said Justice-depute, at command and for obedience of ane Warrant directit to him, of the dait, the tent day of July instant; subscryuit be my Lord Chancellor and vtheris Lordis of his Maiesteis Secreit Counfall; quhair of the tennour followis.

DECIMO Julij, 1605. THE Lordis of Secreit Counfall ordanis the Justice-generall and his deputis to gif this dome following, vpoun Mr Williame Galbraithes, eftir that he be convict of Periurie befor thame, or pat he becum in will, viz. That he fall be tane to the mercait-croce of Edinburghe, with ane paiper on his heid, declairand him to be Men-fworne, Perjuret and Infamous, and to Banische him the Ile of Britane for euir: And that he depairt furth of the said Ile, betuix and the fyftene day of August nixtocum; and gif euir he repair within the samyn Ile agane, without the Kingis Licence, or 3it fall remane within the samyn, and nocht depairt furth pairof, betuix and the said fyftene day of August nixtocum, that he fall be execute to the daith, without any forder dome to be gevin vpone him.

(Sic subscribitur) AL. CANCELL(arius,) SECRET(arius,) QUHITTINGHAM, R. COKBURNE.

SENTENCE. The Justice, be the mouthe of James Hendersoune, dempster of Court, decernit and ordanit the said Mr Williame Galbraithes to be tane to the said mercait croce of Edinburghe, and thair to stand, for the space of ane hour, or thairby, with ane paper vpone his heid, contening thir woirdis, in grit letteris, 'MENSUORNE, PERIURET AND INFAMOUS:' And to be Banischet the Ile of Britane for euir, &c.¹

[*Mr Williame Hairt, Justice-Depute.*]

Sorcery—Witchcraft, &c.

Jul. 23.—PATRIK LOWRIE, in Halie (Ayrshire.)

Dilaittit, accuset and persewit, be Sir Thomas Hammiltoun of Monkland, knyght, aduocat to our fouerane lord, for his hienes entreis, off the crymes fol-

¹ The terms of the Council's Warrant are recited.

lowing, viz. FOR consulting with vmq^{le} Jonet Hunter, ane notorious Witche, and quha was execute to the daith for Sorcerie and Witchcraft: Quhilk vmq^{le} Jonet and the said Patrik, at Witsonday, in the yeir of God I^m.V^c. and four yeiris, convenit thame selffis vpone the cownoun waist Sandhillis in Kyle, maist ewest¹ to the burgh of Irwing; quhair the Devill appeirit to thame and conferrit with thame, vmq^{le} Katharene M^cTeir, ane vther Witche in Halie, and Margaret Duncane in Lones being also in companie with thame, at the samyn tyme. AND siclyk, the said Patrik, being in company with the saidis vmq^{le} Jonet Hunter, Katharene M^cTeir and Margaret Duncane, Witches, Sorcereris and abuseris of the peopill, att Hallowevin, in the yeir of God foirsaid, assemblit thame selffis vpon Lowdon-hill, quhair thair appeirit to thame ane devillische Spreit, in liknes of ane woman, and callit hir selff Helen M^cbrune; att the quhilk tyme, efter lang consultatioun had be thame with the said wikkit Spreit, the Devill, in the liknes of the said Helen M^cbrune, presentit to the said Patrik ane hair belt; in ane of the endis of the quhilk belt appeirit the similitude of foure fingeris and ane thombe, nocht far differrent frome the clawis of the Devill: Lyk as, the samyn belt, being presentit be the said Jonet Hunter to the persones that past vpone hir Assyse, the tyme of hir Convictioun for the said cryme of Witchcraft, was brunt in ane ffyre. LYK AS, at dyuerse tymes thaireftir, thay assemblit thame selffis, in dyuerse Kirkis and Kirk-3airdis; quhair the said Patrik, and remanent his associatis foirsaidis, raifit and tuik vp findrie deid persones furth of thair graves, and dismemberit the saidis deid corporis² for the practizeing of thair Witchcraft and Sorcerie. ITEM, for airt and pairt of the Bewitcheing, be Inchantment and Sorcerie, of Bessie Saweris coirnes, and taking away the substance and fisnowme³ thair of, be the space of ten yeiris, yeirlie aftir vtheris.⁴ ITEM, for airt and pairt of the Bewitcheing of certane milk ky, pertening to Johnne Fergushill, younger in Halie, at Beltane, I^m.Vj^c. and foure yeiris; quhairby the said ky gaif na milk bot bluid and worfome⁵ thaireftir. ITEM, ffor cureing, be Inchantment and Sorcerie, of vmq^{le} Margaret M^cguffok, callit 'the Witch of Barneweill,' hir horse, quhairon scho raid; committit a tuentie yeir syne, or thairby. AND siclyk, ffor laying on of Sorcerie and Inchantment and devillery vpone Jonet Lowrie, the streking of hir blind; and be cureing and taking af of the said Witchcraft af hir agane, and restoiring hir to hir former sight. ITEM, for cureing and helping, be Inchantment and Sorcerie, of Elizabeth Craufurdis bairne in Glesgow, quha had bene deidlie seik of ane strange incureabill diseise, be the space of aucht or nyne yeiris of befoir, be taking ane clayth af the said bairnes fface, and sayneing and

¹ Nearest. ² This seems to have been a favourite practice. It is elsewhere called '*junting*,' (jointing) as may be seen in the description of the midnight orgies of Annie Samson and others of the unhappy wights who suffered for their deceptions of this sort. ³ '*Fushion*' (*foison*,) pith, strength, flavour, &c. ⁴ For ten successive years. ⁵ Blood and purulent matter.

croceing with his hand the said bairnes fface; keiping of the said clayth, be the space of aucht dayis; and thaireftir, haifing returnit to hir with the said clayth, couerit hir face agane thairwith, quha fleipit a tua dayis altogidder, and walknit nocht; and at the tua dayis end, ane of the said barnes eyne, that was ofbefoir tynt, throw the said diseafe, was restoirit to hir; and within fyve dayis thaireftir, the said barne was, be the said Inchantment, curet and mendit be the said Patrik. AND finallie, for ane Cowmone and notorious Sorcerer, Warlok and abuser of the peopill, be all vnlawfull charmes and devillifche Incantationes, vset be him, this xxiiij yeir bygane.

For the quhilkis crymes *respectiue* aboue writtin, the said Patrik Lowrie was put to the knowlege of ane Assyse.—The Aduocat askis instrumentis of the sweiring of Assyse.

MR DAVID MYLL,¹ being sworne, att the desyre of Patrik Lowrie, to mak Declaration of his brute² and behaviour; deponit that he wes bruteit and comounlie callit ‘Pait pe Witch!’ And declaris, he gatt his fatheris malesoune,³ and said he wald mak ane ill end: And declaris, that he wes ordanit to mak his repentance, for the brute and sklander he sustenit; and that he maid his repentance.

And thaireftir the said Patrik Lowrie desyrit the Justice and Assyse to trow⁴ the said Mr David Myll.

My Lord Aduocat protestis for Wilfull Errour, in caice thay acquit him of the Dittay.

VERDICT. Eftir accusation of the said Patrik, be Dittay, of the crymes *respectiue* aboue specifeit, and verificatioun of the samyn, be production of certane writtis be the said Sir Thomas Hammiltoun, aduocat; the Assyse, all in ane voce, be the mouthe of Johnne Wallace in Lonesse, chancellor, stand, pronuncet and declairit the said Patrik to be ffylet, culpabill and convict of the haill crymes *respectiue* aboue specifeit.

SENTENCE. The said Justice-depute decernit and ordanit the said Patrik Lowrie to be tane to the Castell-hill of Edinburgh, and thair to be wirreit at ane staik, quhill he be deid; and thaireftir, his body to be brunt in asches; and his haill moveabill guidis and geir, gif he ony hes, to be escheit, &c.

Fire-raising — Taking Captive and Prisoner, &c.

Jul. 24.—INGRIE AIRMESTRANG in Inzieholme;⁵ Archie Airmestrang of Flaskholme.

Dilaitit of airt and pairt of the tressonabill Raifing of ffyre, [within the House of the Langholme?] burning and destroying thairof, pertening to Harbert Max-

¹ Probably the Minister of the parish where this unhappy creature dwelt.
reputation. Fr. *bruit*.

² Curse, malediction.

³ Credit, believe.

⁴ Report, fame,

⁵ See Vol. II. p. 450.

wall of Kavenfe: Taking of the said Harbert captiue and priffoner: Schuiting of hagbutis and piftolettis, &c.

Mathow Findlafoun of Killeyth become pledge and fouertie for Ingrie, and Archibald Batie, burges of Dumfreis, for Airchie Airmestrang, that thay fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the fcherefdome of Dumfreis or Stewartrie of Annandaill, quhair thay duell; or foner, vpone xv dayis wairning, to vnderly the law, &c.; aither of the saidis perfones vnder the pane of Fyve hundreth merkis money.

Slaughter.

Jul. 25.—GEORGE ANGUSE, notter; James Blair, burges of Air; Dauid Kennydie of Corffis; and Gilbert Grahame, younger of Craig.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Richerd Spens, fervand to the Erle of Caffillis.¹

PERSEWERIS, Richerd Spens, in Vgftoun, as father; Robert Spens, his fone, as brother.

The perfeweris paffis *simpliciter* fra the saidis George Anguse, &c. and declairis thame to be Innocent of the said Slauchter: Quhairupoun the saidis perfones on pannell askit instrumentis, and protestis for releif of thair cautioneris; and that thai be nocht callit or perfewit for the said cryme, in tyme cuming.

Slaughter.

Jul. 26.—ALEXANDER BRUNTFEILD of Hardaikeris, and Nicoll Bruntfeild, fone to the Guidman of Eiftfeild.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Bruntfeild, younger in Tennendrie.

PERSEWER.

Robert Bruntfeild, as brother.

PRELOCUTOURIS for the pannell.

Mr Johnne Ruffell, Mr Williame Oliphant.

It is allegit be the pannell, that the defunct, for quhais slauchter thai ar perfewit, was flane at the horne, for four feuerall cauffis, contenit in the four Hoirningis presentlie producet be the pannell: Vpoun production quhairof, the pannell tuik instrumentis; and the pannell protestit, that the producing thir Hoirningis fould nawayis affirme thame to be culpable of the factis lybellit.—Continued to Nov. 24.

Nov. 28.—Robert Bruntfeild, fear of Todrig, and Nicoll B. of Quhyte-hous become pledge and fouertie, conjunctlie and feuerallie, that thai fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the fcherefdome, quhair they duell (Roxburghe,) or foner, vpone xv dayis wairning; vnder the pane of ane thoufand merkis for the entrie of the said Alexander, and 500 for the said Nicoll.

¹ See Dec. 6, 1605.

Murder under Trust — Stouthreif — Adultery, &c.

Jul. 26.—WILLIAME ROISE of Dunkeith.

Dilaitit, accuset and persewit be Sir Thomas Hammiltoun of Mounkland, kny^t, Aduocat to oure souerane lord for his hienes interes, of the crymes following, viz.

FORSAMEKILL as it is statute and ordanit be our souerane lordis Actis of Parliament, that the Murthour or Slauchter of quhatsumewir his Maiesteis liegis, quhair the pairtie is slayne vnder traist, credite, assurance and power of the slayer, all sic Murthouris and Slauchteris to be committit in tyme cuming, eftir the dait of the said Act, quhilk is of the dait the xxix day of Julij, the yeir of God, I^m.V^c.lxxxvij yeiris, the famin being lauchfullie tryit, and the persoune dilatit, ffund giltie be ane Affyise thair of, falbe Treafoun; and the persounes fund culpabill fall fforfalt lyffe, landis and guidis: As the said Act att mair lenth beris. AND trew it is, that the said Williame Roise, haifing concludit in his haert the crewall Murthour and Slauchter of vmq^{le} Alexander Gybsoune in Nig; ffor performance of his wicket intentioun, he, accompaneit with Farquhair Roise, domestik feruitour to Nicolas Roise of Pitcalany, Andro Graffich, sone to Alexander McGilliepedder and Thomas Mcconchie, vpoune the fourt day of Februar lastbypast, being Monunday, he being vnder freindschip and familiaritie with the said vmq^{le} Alexander, tryffit to meit the said vmq^{le} Alexander, in Huchfoun Brabneris hous in Pitcallene; quhair the said Williame Roise and his compliceis foirfaidis, in ane maist freindlie and loving maner intertineit, vnder traist of assurance, the said vmq^{le} Alexander all the day, till the ewening, drinking and making mirrie: And about aucht houris att ewin, vpoune the famin day, being ane dark nycht, baith mark and moneles,¹ convoyit and brocht the said vmq^{le} Alexander furth of the said Huchfoun Brabneris hous, and caufit him to vnderstand that he wald transpoirt him to his awin hous; att the quhilk tyme, he maist treffonablie drew and convoyit the said vmq^{le} Alexander out of the way, to ane burne-syde, nocht far distant fra the said Huchfounis hous, he being than vnder the said Williamis traist, credite and assurance, lipning for na harme, iniurie or hurt to haif bene done to him be the said Williame and his complices, that war with him in his company, bot to haif bene preferuit and defendit be him thair. Efter the said Williame, in forme of freindschip and familiarite, desyrit the sycht of the said vmq^{le} Alexanderis sword, the said Williame and his complices maist treasonablie disarmit him of his armour and wappinnis that wes about him, and maist treasonablie mordreift and slew him, ffyrst be stryking aff his . . . hand, nixt be gewing to him ane crewall and deidlie straik in his heid, with ane half lang sword, and diueris vtheris crewall and deidlie woundis in diueris vtheris pairtis of his body; and thairby, maist crewallie and treffonablie, vnder traist, freindschip and assurance, mordreift and slew the said vmq^{le} Alexander Gybsoune; and he wes airt and pairt of the said crewall and treffonabill Murthour; ffor the quhilk he aucht and sould be pwneist as ane Traittour, viz. be ffoirfaling of his lyffe, landis and guidis. To the takin² that he wes culpabill of the said treffonabill fact, he immediatlie eftir the committing of the said crewall Murthour, and to the intent the famin sould nocht haif cum to lycht, he delyuerit to the said vmq^{le} Williame McStein, his cotter, the soun of foure schilling, and the said Farquhar Roise gaif vther four schilling, to the said Andro Grafich, for bureing³ of the said vmq^{le} Alexander in the eird,⁴ or casting of him in the sea: Lyke as, the said vmq^{le} McStein and Andro Grafich, being thaireftir tane and apprehendit for the said fact, be thair Depositionis, grantit and confessit that the said Williame wes the principall strykear and mordreifar of the said vmq^{le} Alexander, with his awin hand; and att the place of execution, quhair thay sufferit, thay past to death thairwith. To the takin also, the said Williame Roisis being persewit before our souerane lordis Justice, to haif vnderlyne the law for the said cryme, he past to the horne, and continewallie sensyne hes bene fugitiue thairfoir; as the Letteris presentit beris. ITEM, the said Williame, being indytit and accusit, fforfamekill as it is statute and ordanit, be diuerse our souerane lordis Actis of Parliament, speciallie, be ane Act of his

¹ Dark (*mirk*) and moonless.² In token or testimony.³ Burying.⁴ Earth, ground.

hienes ellewint Parliament, begun and hauldin att Edinburgh, the xxix day of Julij, I^m.V^c.lxxxvij yeiris, that in caice it fall happin ony landit men to be lauchfullie and ordourlie convict of the crymes of Commoun Thift, Reffett of thift, or Stouth-reiff, in tyme cuming, thay fall incur the cryme and payne of Treffoune, that is to say, tinfall¹ and fforfaltour of lyffe, landis and guidis; as the said Act att mair lenth beris. And trew it is, that the said Williame Roife of Dunskeith, being ane landit gentilman and heretour of the saidis landis of Dunskeith, accompaneit with the perfounes foirsaidis, his complices, immediatlie at the tyme of his treffonabill Murthering and slaying of the said vmq^{le} Alexander Gibfoun, in maner and at the tyme aboue writtin; he, be way of Maisterfull Thift and Stouth-reiff, treffonable, violentlie and thiftioullie staw, conceillit, reffett, rest and away-tuik, fra the said vmq^{le} Alexander, the sowne of ane hundreth merkis money, or thairby, quhilk the said vmq^{le} Alexander had vpone him, and in his purse, the tyme of the said Williame Roife committing of the said treffonabill Murthour and Slauchter foirsaid: and the said Williame is airt and pairt of the Stouth-reif, steilling and away-taking of the said money; and thairthrow, the said Williame Roife, being ane landit gentilman, in maner foirsaid, hes committit manifest Treffoune, and the panes and pwneishment specifeit in the saidis Actis of Parliament, viz. tynfall and fforfaltour of his lyfe, landis and guidis, aucht and fould be execute aganis him with all rigour, in exampill of vtheris. To the taikin, that he, being culpabill of the saidis treffonabill crymes of Thift and Stouth-reiff and Murthour vnder trest, the said Williame was perfewit criminalle thairfoir, befor the Justice and his deputis, to haif vnderlyne the law for the samyn, in the moneth of Maij lastbypast, he than past to the horne, and hes bene continuallie senfyne fugitiue for the saidis crymes: As the saidis Letteris of Hoirning, producet judiciallie be our said souerane lordis aduocat, at lenth portis. Lykas, be his awin Depositiones, he hes confessit the Murthour aboue writtin, and that he wes airt and pairt thairof. ITEM, the said Williame, being indytit and accuset, fforfamekill as he, haifing thir dyuerse yeiris bygane interteneit and keipit in companie with him Marie Rannaldoche, ane harlot, committing Adulterie with hir, he being mareit with vmq^{le} Agnes Rose, his lauchfull spous, and the said Marie being with bairne to him, scho and vmq^{le} Williame Mcstene, servand and hyred man to the said Williame, togidder with the said Williame him selff, consultit and concludit, at diuerse thair tryftis and meittingis, the treffonabill Murthour of the said vmq^{le} Agnes, his lauchfull spous, vnder trest, credeit and assureance; lyk as, for performeance of thair wikket purpois and intencionne, the said Marie, be the said Williame's direction, gaif to the said vmq^{le} Agnes, his spous, poysonet drinkis; quhilkis treffonabill drinkis, nocht haifing wrocht vpone hir to the deith, bot the samyn, at findrie tymes, being vomeitit bak agane be hir; and finding himselff disapoyntit be that treffonabill meayne,² and hir daihe postponit and delayit, he thairfoir of new consultit and devyfit with the said Marie Rannaldoche and Williame McStene, quha, in the moneth of May, I^m.V^j^c. and foure yeiris, be the said Williame's speciall causing, direction and command, maist treffonabillie, crewallie and vnmercifullie Strangallit and wirreit the said vmq^{le} Agnes, his spous, in her bed, within hir awin hous, vnder filence and clud of nycht; ffor performeance quhairof, he promiseit to the said Marie Rannaldoche to marie and tak hir to wyfe: Lyke as, the said Williame McStene, being apprehendit for the treffonabill Murthour of the said vmq^{le} Alexander Gibfoun, and examinat be certane of the Ministrie³ and gentilmen of the cuntrie, Confessit and declairit that he, at the said Williame Rossis command and direction, accompaneit with the said Marie Rannaldoche, mordreift and treffonabillie strangillit the said vmq^{le} Agnes, his spous; ffor doing of the quhilk treffonabill deed, the said vmq^{le} Williame McStene Confessit he reffautit fra the said Williame, as ane rewaird for his panes, ane rig of beir,⁴ togidder with the haill clething that was vpone the said Williamis bak the tyme of the said Murthour, viz. his bonet, fark, coitt, doublet, breikis, hois, fokis and buittis. Lyk as, for testificatioun of the treuth of the said treffonabill Murthour, and that the said Williame was airt and pairt thairof, the said Williame, be his Depositiones maid in presens of Mr Williame Haire, Justice-depute, and the Bailleis of Edinburgh, the xxv of this

¹ Loss.² Mean, Fr. *moyan*.³ Clergy.⁴ Ridge of barley.

instant, hes confessit that the nycht appoyntit be him and his complices for performeing of the said treffonabill Murthour, he withdrew him self furth of his awin hous of Dunskeith, fra his said spous, to his chieff the Laird of Balnagounes house, quhair he remanit quhill midnycht; about the quhilk tyme, his conscience being fa tuichet and trubillit for the said treffonabill fact, quhilk, be his counfall and directioun foirfaid, was that nycht to be put in executioun, be the persones foirfaid, he arraise out of his bed, putt on his claithes and come to his awin house, of purpois (as he declairit) to haif stayit the said wicked fact: And he, finding the turne done afoir his cuming, he reteirit him self bak agane. Quhilk treffonabill fact he hes continuallie senfyne conceillit to the tyme of his Examinatioun foirfaid. And thairthrow, he is airt, pairt, red and counfall of the said treffonabill Murthour and strangelling of the said vmq^{le} Agnes his spous, vnder trest, and aucht and sould be puneischet thairfoir, conforme to the tennour of the said Act of Parliament. ITEM, the said Williame, being indytit and accuset, that he, being ane landit Gentilman, as said is, with his complices, cownone thevis, in the moneth of the yeir of God thiftiouflie, and be way of Maisterfull Thift and Stouth-reiff, staw, rest and away-tuik, fra Williame Micain M^cWilliame in Gany, tua schein, had and disponet thairupoune at his pleasour; and he, being ane landit Gentilman, be committing of the said maisterfull thift and stouth-reiff, hes committit Treffone; ffor the quhilk, he aucht and sould be pwneischet, conforme to the said Act of Parliament. To the taikin, he being challanget for the samyn, maid redrefs and satisfacioun to the said Williame M^cean, at command of Hucheon M^cTullie, his maister. ITEM, for airt and pairt of the thiftious Steilling, conceilling, ressetting and away-taking of ane ox, fra James Corbett in Arkbole, in the moneth of yeiris: And he, being ane landit Gentilman, hes thairby committit Treffone, &c. ITEM, for airt and pairt of the steilling, conceilling, ressetting and away-taking fra Findla Mansoun, Minister in Nig, in the moneth of October I^m. sax hundreth and foure yeiris, of sax geise, had and convoyit the samyn away with him, and disponit thairupoun: And the said Williame, being ane landit Gentilman, hes thairthrow committit Treffone, &c. ITEM, the said Williame, being indytit and accuset, ffor cuming with his complices, in the moneth of December, the yeir of God I^m.Vj^c. and foure yeiris, to David Fairnes barne in Nig, and thiftiouflie, vnder silence of nycht, brak the said barne, and staw, conceillit, resset and away-tuik furth thairof ane sek full of victuall, contening sax firlottis. To the taikin, he come to the said David Fairne, and offerit to get the samyn tryit furth¹ to him, for ane rewaird; and he was airt and pairt of the thiftious steilling, conceilling and away-taking thairof; and thairfoir, he being ane landit Gentilman, hes incurrit the cryme and pane of Treffone. ITEM, for airt and pairt of the steilling, conceilling and away-taking of saxtene schein, pertening to Alexander Mansoun, Donald Beroch and Andro Bane, in the moneths of October and November lastbypast, in the yeir of God I^m.Vj^c. and four yeiris, had and convoyit the samyn away with him to the Craigis of Dunskeith, quhair he slew the said schein and cast thair intrallis in the sea; and thairefter, careit the boukkis² thairof to his awin hous in Dunskeith, quhairin he and his complices did eit the samyn: And he, beand ane landit Gentilman, be committing of the said theft and maisterfull Stouth-reif, hes committit Treffone, and incurrit the panis contentit in the saidis Actis of Parliament. ITEM, for Cownoun thift, cownoun resset of thift, inputting and outputting of thift fra land to land, fra cuntrey to cuntrey, baith of auld and of new: And thairfoir, he being ane landit Gentilman, be committing thairof, hes committit manifest Treffone, and aucht and sould be pwneischet conforme to the Actis of Parliament, viz. be ffoirfaltour and tynfell of lyfe, landis and guidis, in exampill of vtheris to commit the lyk in tyme coming.

For the quhilkis crymes, the Justice-depute ordanit the said William Roife to be put to the knowlege of ane Assyse, of the persones following.

¹ Searched out, discovered.

² *Bulks*, carcasses.

ASSISA.

Hucheon Roife, fear of Balmukie, Williame Dumbar of Hemprigis, Mark Mawer of Staynies,
 Alex^r Bane of Wester Logie, Walter Kynnaird of Cowbyn, Mr James Dumbar of Tarbett,
 Donald Thornetoun, burges of Johnne Burgie in Haltoun, Capitane Andro Bruce,
 Edinburgh, Alexander Watfoune in Grange, Robert Dumbar of Burgie,
 Mr Rannald Bane, burges thair Alexander Cruikschank in Lyttill Patrik Dumbar of Blarie.
 Ja Adamfoun, burges of Kinlofe, Pynnrik,

The Aduocat takis instrumentis of the fwering of the Affyfe; and that Williame Rose grantit the Slauchter of vmq^{le} Alexander Gybsoune.

The Pannel, befoir his Convictione, declairis that Ferquhair Roife wes nocht in company with him at the slauchter of vmq^{le} Alexander Gybsoune; nather wes he ather airt or pairt of the said Slauchter.

VERDICT. The Affyfe, be the mouth of the said Mr James Dumbar, chancellor, all in ane voce, ffand, pronuncet and declairit the said Williame Roife to be ffylet, culpabill and convict of airt and pairt of the treffonabill and crewall Slauchter and Murthour of the said vmq^{le} Alexander Gibsoune, indueller in Nig, committit the tyme foirsaid, vnder trest, affurance, freindschip and familiaritie, in maner aboue writtin: AND als, ffand, pronuncet and declairit him to be ffylet, culpabill and convict of airt and pairt, red and counfall of the treffonable Murthering, strangling and wirrieing of the said vmq^{le} Agnes Roife his spous, committit the tyme foirsaid, vnder trest, credeit and affurance, in maner as is aboue writtin: AND lykwayes, ffand, pronuncet and declairit the said Williame Roife, to be Cleane, innocent and acquit of the haille poyntis of Thift, quhairof he wes accusit be Dittay, in maner aboue writtin, and of everie ane of thame.

SENTENCE. For the quhilkis treffonabill crymes of Murthour, of the quhilkis he was convict in maner foirsaid, the said Justice-depute, be the mouth of James Henderfone, dempster, ordanit the said Williame Rose of Dunskeathe to be tane to the mercait croce of Edinburghe, and thair his heid to be strukin fra his body: And decernit and ordanit all his landis, heritages, takis, fteidingis, rowmes, possessiones, coirnis, cattell, inficht pleniffing, guidis and geir, to be ffoirfaltit and escheit to our fouerane lordis vse, as convict of the saidis treffonabill crymes.

Slaughter — Shooting of Hagbuts and Pistolets.

Jul. 30.—DAUID JARDANE in Wandeldyke, Alexander Jardane in Wandell, Johnne Symfoun in Mylnehill, and twelve others.

Delaitit, accuset and perfewit for the crymes following, viz.

FORSAMEKILL as the saidis Dauid, &c. with thair complices, with convocation of our fouerane lordis leigis, to the number of tuentie-foure perfones, or thairby, all bodin in feir of weir, with jakis, secreitis, speiris, steil-bonnettis, swoirdis, hagbuttis and pistolettis, expresse prohibeit to be borne, worne, vsed or schot with, be our fouerane lordis Actis of Parliament and Secreit Counfall, vnder dyuerse panes

contentit thairintill; haifing confauet ane deidlie feid, rancour and malice aganis vmq^{le} James Cleilland¹ (in Vnder-the-bank,) in the moneth of Junij, the yeir of God I^m. fyve hundreth fourfcoir fourtene yeiris, came to Wandelholme, upon Clyde, befyde Davieschaw, quhair the faid vmq^{le} James was, in sober and quyet maner for the tyme, ryding at the hunting, in company of Sir James Hammiltoun of Libbertoun, lipning for na harme, iniurie or perfute of ony perfones, bot to haif leuit vnder Godis peax and his Maiesteis, and thair fett vpone him, schot and dilafchet² thair hagbuttis and pistolettis at him, quhairby thay schott him throw the body, and with fuoirdis, quhingeris and remanent wappones foir-faidis, hurt and woundit him in dyuerse partis of his bodie, to the effusioun of his bluid in grit quantitie: Off the quhilkis schottis and straikis, the faid vmq^{le} James immediatlie thaireftir depairtit this lyffe; and sa, the faid vmq^{le} James Cleilland was crewallie and vnmercifullie flane be the faidis perfones: And thay being all vpone the grund, pursuing him with fuoirdis and remanent wappones aboue specifeit, thay and ilk ane of thame ar airt and pairt of the faid crewall Slauchter, committit vpoun fett purpois, provisioun and foirthocht felony; in hie and manifest contemptioun of our fouerane lordis auctoritie and lawis, in ewill exampill to vtheris his hienes lieges to commit the lyk crewall Slauchteris.

PERSEWERIS, Gawin Kneilland, Roger Kneilland, as fones.

PRELOCUTOURIS for the pannell, Mr Johnne Ruffell, Robert Hammiltoun.

VERDICT. The Assyse, be the mouth of David Blair in Corflaw, chancellor, ffand, pronunceit and declairit the faidis Dauid Jarden, &c. to be Cleane, innocent and acquit of airt and pairt of the Slauchter of the faid vmq^{le} James, and of the hail poyntis of Dittay aboue writtin.³

[*Mr Williame Hairt et Mr Williame Boirthuik, Justices-Deputes.*]

Slaughter — Shooting of Pistolets.

Aug. 6.—ARCHIBALD MAXWALL of Cowhill,⁴ and Williame Maxwell, appeirand of Cowhill, his sone.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Robert Maxwell of Kirkhill (Kirkhous, or Crovestanes,) committit in the moneth of Junij 1583 yeiris: And for beiring and weiring of pistolettis, contrair the Actis of Parliament.

PERSEWERIS, Williame Maxwell (of Kirkhouse,) Chairles Maxwell, James Maxwell, Robert Maxwell, Dauid Maxwell, Sir Thomas Hammiltoun.

PRELOCUTOURIS for the pannell, Mr Williame Oliphant, Mr Johnne Ruffell, Mr Alexander King, Sir Rob^t Maxwell of the Schottis, Williame Maxwell of Gribtoun, Eduard Maxwell of the Hillis.

DITTAY against the Pannell.

FORSAMEKILL as the faidis Archibald Maxwell of Cowhill, and Williame Maxwell appeirand of Cowhill, with thair complices, with convocatioun of our fouerane lordis lieges, to the number of fax perfones, or thairby, all bodin in feir of weir, with swoirdis, secreittis, gantillettis, plait-slevis, lang hagbuttis and pistolettis, expresse prohibeit to be borne, worne, vset or schot with, be our fouerane lordis Actis of Parliament, vnder dyuerse panes contentit in the samyn, in the moneth of Junij, or thairby, the yeir of God I^m. fyve hundreth fourfcoir thre yeiris, vpone deidlie feid, rancor and malice confauet aganis the faid vmq^{le} Robert Maxwell of Kirhous, for teynding⁵ of the faid Archibald Max-

¹ Kneilland. The name was indifferently spelt Kneilland and Cleilland, at this period.

² Old Fr. *deslascher*.

³ With regard to the rest of the pannells, the pursuers 'past fra' a number; and the remainder were 'repleget to the regality of Dalkeyth, be my Lord of Mortoune.'

⁴ See Nov. 6, 1605.

⁵ Tything his lambs and other

small tythes, as having a heritable right to the teinds or tythes of Cowhill. The drawing of small tythes was always considered an oppressive act in Scotland, and had for a long period been disused.

wall of Cowhillis lambes and vtheris small teyndis, thay sett vpon the said vmq^{le} Robert, vpon the landis of Redbank, lyand within the parochin of Kirkhous, and stewartrie of Kirkcubrycht, quhair he was, in sober and quyet maner for the tyme, doand his lefull effaires and buffines, in teynding of lambes; dredand na evill, harme, iniurie or perfute of ony persones, bot to haif levit vnder Godis peax and our fouerane lordis; and thair, schott thair hagbuttis and pistolettis at him, and maist crewallie, schamefullie and vnmercifullie slew the said vmq^{le} Robert Maxwell: And thai and aither of thame ar airt and pairt of the said crewall Slauchter; quhairby thay haif nocht only committit crewall Slauchter, vpon set purpois, prouisioun and foirthocht felony, bot in lyk maner hes contravenit the tennour of the said Actis of Parliament, in beiring, weiring and schuiting of hagbuttis and pistolettis, and hes incurrit the panes contenit thairin, quhilk aucht and sould be execute aganis thame with all rigour, in exampill of vtheris to abstene frome the lyk in tym cuming.

It is allegit for Williame Maxwell, younger of Cowhill, that the tyme of the committing of the fact lybellit, viz. in Junij, 1583, that he was nocht past xij yeiris of age, *et sic non doli capax*; and can nocht thairby be put to the knowlege of an Assyse, for the crymes lybellit; and offeris to prove his age instantlie.—It is anfuert be the Aduocat, the allegiance aucht to be repellit, as nawayis releuant to stay the mater to pas to the knowlege of an Assyse, becaus all thingis *in facto* man be tryit be the Assyse: And albeit he had been minor, the contrair quhairof is maist manifest, yit the samyn procures na impunitie, in crymes of this natour; speciallie, being committit eftir the manner lybellit.

THE Justice, nochtwithstanding of the allegiance, findis proces; and Remittis the cryme lybellit aganis Williame Maxwell to the knowlege of ane Assyse; and Remittis to the Assyse anent his age, to tak cognitioun thairin as thay think expedient.

It is forder allegit, that this matter can nawayis pas to the tryell of ane Assyse, becaus the pannell, in the moneth of Februaire, yeir of God I^m.V^c. fourscoir aucht yeiris, hes obtenit our fouerane lordis Respett, quhairof thair is dyuerse yeiris as yit to ryn: As the Respett producet beiris.—The Aduocat takis instrumentis of the production of the Respett, be bayth the persones on pannell. It is allegit, that the Respett is null, becaus the samyn is nocht past be the Thesaurer and the Register, conforme to the Act of Parliament. It is anfuert, aucht to be Repellit, in respect of the Respett, quhilk is past the Previe seill.—It is forder allegit, that the Respett producet is null, in respect of the Act of Parliament, quhilk makis all Respettis to be null, the samyn nocht being grantit be satisfioun of partie and Letter of Slaines¹ grantit be the pairtie thairvpoun.—It is anfuert, that the Act of Parliament allegit, is only temporall.²

THE Justice declairis, during the tyme of this Respett, he will nocht, for the Slauchtir lybellit, put the pannell to ane Assyse.—Quhairvpoun the pannell askit instrumentis.

¹ A writ granted by the nearest relations of the deceased, acknowledging themselves to be satisfied for the slaughter. It frequently bore their consent to a free pardon by the King.

² Temporary.

The Aduocat producet the Kingis Maiesteis Letter, direct to the Justice, &c.; quhairof the tennour followis.

JAMES R.

JUSTICE, Justice Clerk and your deputis, We greit you weill. Forasimuche as Archibald Maxwell of Cowhill and Williame Maxwell his sone, being summond to compeir befor you, in our Tolbuith of Edinburgh, the saxt day of August instant, to vnderly our law for airt and pairt of the Slauchter of vmq^{le} Robert Maxwell of Crovestanes, and for contravening our Actis of Parliament, in beiring, weiring and schuiting with hagbuttis and pistolettis, as We are informet, intendis to vse ane Respett allegit grantit to thame by ws, quhairof we nevir had ony knowlege: And gif ony be producet be thame, the same is senisteruslie purchest by our knowlege,¹ and contrair to our lawis, Actis of Parliament, and equitie. Thairfoir, it is our will, and We command you, that incontinent eftir the sicht heir-of, ye put to ane knowlege of Assyse, for beiring, weiring and schuiting of hagbuttis and pistolettis: And gif thay be convict, that ye caus pwneisch thame conforme to our Actis of Parliament, by cutting af pair rycht hand; and forder as our saidis Actis prescryues. And gif ye delay the tryell of the Slauchter, vpoune the production of the said allegit Respett; than, eftir pair tryell and pwneischment, for beiring and weiring of hagbuttis and pistolettis, in maner foirsaid, ye fall put them in sure firmance and keiping within the Tolbuith of Edinburgh, quhill we be adverteist of your proceedingis, and our forder Will be signifeit vnto you pairanent. This ye fall nawayis fail to do, as ye will answer pair-upoune: Quhairanent pir presentis fall be to you sufficient Warrant. GEVIN at Houghtoun, the penult day of July 1605.

And accoirding to the said Warrant, the pannell aucht to be put to the knowlege of ane Assyse.—It is answert be the pannell, that the Kingis Maiesteis Previe Letter is na sufficient Warrant to derogat the Respett, past the Previe Seill; speciallie, in respect that sic privat Letteris ar reprobat be the Actis of Parliament.—It is answert be the Aduocat, that sic previe Letteris as ar purchest for stay of justice, ar disallowit be Act of Parliament; bot this Letter is direct, of certane knowlege, and furtherance of justice, and pwneischment of ane odious cryme.

THE Justice findis as of befor, for the Slauchter allanerlie.

It is forder allegit, be the pannell, that that pairt of the Dittay, concerning the schuiting of ane hagbut, can nawayis be put to the knowlege of ane Assyse, becaus thair is ane Respett producet for the Slauchter; quhilk Respett is fund relevant for the Slauchter, to stay the pannell to pas to ane Assyse; and thair is na thing contenit in the Dittay, for schuiting, beiring and weiring of pistolettis and hagbuttis, bot that the defunct was slane with ane hagbut; quhilk is the maner how the said fact was committit: And as the fact is elydit be Respett, sa the maner of the committing thairof is superceidit be the said Respett; sua that, during the said tyme comprehendit in the Respett, nather can the pannell be put to the knowlege of ane Assyse, for the slauchter, nor schuiting of the hagbut, quhilk was the instrument be the quhilk it is allegit the deid was committit.—It is declairit be my lord Aduocat, in respect of the Justice Interloquitour, he Restrictis his summondis only for persute of the pannell for beiring, weiring and

¹ By sinister means, procured without our knowledge.

schuitting of hagbuttis and pistolettis : And allegis, that the Respett producet can nocht stay proces for that cryme; becaus Respettis, being odious of the Law, as grantit for impunitie of crymes and stay of justice to pairteis greivit, thay can nevir be extendit fauourabillie, be interpretatioun of the Judge, to ony forder nor (than) the expresse woirdis thair of beiris : And thairfoir, the bering, weiring and schuiting with hagbutis and pistolettis, being ane cryme pwneisheable of the Law, and nawayis mentionet in this Respett, the pardon of the cryme of Slauchter, content in the said Respett, can nevir be extendit to the vther cryme of schuiting with hagbutis, &c.; speciallie, in respect of the woirdis of the Respett, pardonning the Slauchter allanerlie, and of his Maiesteis Warrant producet; quhilk removes all doutt that evir his Maiestie had intentioun to pardoun the cryme of the hagbuttis and pistolettis to the pannell.—It is anfuerit, that the Aduocattis declaratioun alteris nathing the tennour of the Letteris, contentis thair of, and Interlocutour producet. Thair is na mentioun maid in the Letteris of beiring and weiring and schuiting, bot only of ane schot, be the quhilk it is allegit the Slauchter was committit : And forder, the Respett producet is nocht only extendit to the Slauchter, bot all that mycht follow thairupone; quhilk was the schuiting of the hagbut, be the quhilk the Slauchter was committit : And quhair it is allegit, that the Respett grantit for ane cryme can nocht be extendit to ane vther, aucht to be repellit, in respect of the Respett, and the coniunctioun of the factis : And forder, of the Law and practik of this realme, ane Respett or Remissionne grantit of ane gritter cryme comprehendis less crymes, albeit na mentioun be maid of the less; speciallie, haifing confideratioun, quhan the less crymes ar ane pairt of the gritt cryme, quhairfoir the Respett is gevin, and all done *unico contextu*, at ane tyme; and the less cryme the instrument of the grit, quhilk is respettit.

It is forder allegit, that this Respett man comprehend the schuiting with the hagbut, in respect it is expresse statute, be Act of Parliament maid in the dayis of King James the Fourt, Parlamento sexto, cap. 62, That in all Respettis and Remissiones, mentioun fall be maid of the grittest cryme, sa that be the expresse meaning of the said Act, the grittest cryme being remittit and content in the Respett, the less crymes man be lykwayis comprehendit thairintill; speciallie, in thir crymes, quhilkis ar sa coherent and conioynet togidder, that the Respett or Remissionne comprehending the grittest, of all necessitie man comprehend the leift.—It is anfuerit be the Lord Aduocat, that that Act of Parliament militatis only, quhair thair is Remissionne or Respet, tane only for ane perticuler cryme, and ane generall clause of Remission subioynit thairto; bot in this caice, the Respett producet contenis only the cryme of Slauchter allanerlie, without ony generall clause of vther crymes subioynit thairto : In respect quhair of, the allege-

ance aucht to be repellit.—It is anfuerit, be the pannell, that the Respet nocht only comprehendis the flauchter, bot also all thingis that can follow thairupoun, quhilk is the schuiting.

It is forder allegit, be the pannell, that the cryme of schuiting and weiring of hagbuttis and pistolettis was nevir *in viridi obseruantia*, and sic a cryme quhairupoun ony accusatioun or puneischment followit, befor the Act of Parliament, in anno I^m.V^c.lxxxxvij; fra the quhilk tyme and Act, that cryme hes only bene obseruet, and the pwneischment contenit in the said Act hes only had place. And albeit, be Act of Parliament maid in anno I^m.V^c.lxvij, it is statute and ordanit, that the weiring, vsing and schuiting of hagbutis and pistoletis, fall be tynfall (*loss*) of the rycht hand, yit be ane posteriour Act, maid in anno I^m.V^c.lxxix, the pane of the schuiting and vseing is only pecuniall, contening the fowme of x li. and tynfall of the hagbut or pistoll: And sa, haifing confidderatioun that this fact is allegit to haif bene done in anno 1583, lang befor the yeir of God I^m.V^c.lxxxxvij, the panes of the said Act can nawayis be extendit aganes thir defenderis. It is anfuerit be the Lord Aduocat, that the Act of Parliament, in anno I^m.V^c.lxxix, maid lang befor the committing of the cryme lybellit, levis to the Kingis Maiestie, his optioun of the inflicting of the corporall pwneischment for the said cryme; quhairanent, his Maiestie hes declairit his will, be the Warrant producet.

It is forder allegit be the pannell, that the Act of Parliament, maid in anno lxxxxvij, declairis the penaltie of the former Actis to haif place, with the additioun; sa that befor the tyme, the Kingis Maiestie nevir declairing his Will, his Maiesteis Will and penaltie man be only extendit fra the dait of the last Act.—The Aduocat anfueris, the maist solempne Declaratioun of his Maiesteis Will is be Act of Parliament.

THE Justice Repellis the allegiance, in respect of the Act of Parliament, Respett producet, and his Maiesteis Warrant; and Ordanes forder proces.

It is forder allegit, be the pannell, that the pannell, for weiring and vseing of pistolettis, can nawayis be put to the knowlege of ane Assyse, becaus it is confessit in the Dittay, that the weiring and schuiting of the hagbut or pistolettis was committit vpoun the landis of Reidbank, quhair the defenderis duelt and remanit for the tyme; and it is nawayis prohibeit be the Act of Parliament, bot be the contrair, it is permitted to persones to beir, weir and schuit hagbuttis and pistolettis, within thair awin houffis, yairdis and cloissis: And trew it is, gif ony hagbut was schott, borne or worne, the samyn was within the houe of the saidis landis, at the leift, hard be the yettis and durris thairof: And albeit ony persone wald schuit and weir within his awin houe, or at the yettis or within the cloissis

thairof, that is na cryme of the law. And now it man be respectit, that thair is na mair in our Dittay, bot only the beiring, weiring and schuiting, &c.; vnder protestatioun, that the pannell nawayis grantis the samyn.

ASSISA.

Johnne Lyndfay of Auchinskeach, Jo. Mertene, bailzie of Blaikschaw, Michell Anderfoun, burges of George Reidik of Airdrie, Adame Strudgeoun of Myllerland, Dumfreis, Johnne Turnour of Ardwell, Harbert Strudgeoun of Towcroce, Clement Edzer of Kirkblane, Williame Williamefoune, burges Johnne Richiefoune, burges of Harbert M'kie in Prestoun, of Dumfreis, Dumfreis, Robert Edzer of Blaikschaw, Johnne Slowane¹ of Garroche, Johnne Gibfoun, burges thair. Robert Rediche of Barnehowrie.

OBJECTION to an Affisor.—It is allegit that *Williame Maxwell of Merfyde* can nocht pass of this Affyse, becaus he was nocht of perfyte age, viz. vpoun the age of xiiij yeiris, the tyme of the committing of the fact lybellit.—It is anfuerit, be the Aduocat, the allegeance aucht to be repellit, in respect of his present age.—The said Williame Maxwell being inquyrit be the Justice and fuorne, ‘Quhat age he was presentlie of?’ Declairit he was outwith xxv yeiris of age.—It is allegit be the pannell, that the said Williame Maxwell of Merfyde, the tyme of the committing of the fact lybellit, was nocht foure yeir auld.

THE JUSTICE Repellit *William Maxwell*, in respect of his awin confessioun, quha declairit that he was tennent to Harbert Maxwell of Kavenfe.

The Aduocat takis instrumentis of the sweiring of the Affyse, and protestis for Wilful Errour gif thay acquit: As also of the sweiring of the Dittay be the perseweris; and that the defunct was flane be Williame Maxwell appeirand of Cowhill, be ane schott.

SPECIAL VERDICT of the Affyse.

THE saidis persones of Affyse, be the mouth of the said Johnne Lyndfay of Auchinskeach, chancellor, ffand, pronuncet and declairit, all in (ane) voce, the said ARCHIBALD MAXWALL elder of Cowhill to be Clene, innocent and acquit of the beiring, weiring and schuiting of hagbuttis and pistolettis, committit vpon the saidis landis of Reidbank, in the moneth of Junij, the yeir of God Im.Vc. fourfcoir thre yeiris: **AND** sicklyke, ffand, pronuncet and declairit, all in ane voce, be the mouth of the said Chancellor, the said WILLIAME MAXWELL, appeirand of Cowhill, to be ffylet, culpabill and conviet of the beiring, weiring and schuiting of ane hagbut; committit in the moneth of Junij, the yeir of God Im. fyve hundreth fourfcoir thre yeiris, vpone the grund of the saidis landis of Reidbank, within ane speir-lenth to the hous thairof, pertening than to the said Archibald Maxwell; the said Williame Maxwell than being within the age of fourtene yeiris. **IN** witness quhairof, the chancellor, for him self, and in name of the haill remanent persones of Affyse, hes subferyuit thir presentis with his hand.

(Sic subscribitur)

JHONE LYNDESAY.

Quhairupoun the saidis Archibald and William Maxwellis askit actis and instrumentis: and the said Charles Maxwell, in name of our said fouerane lordis Aduocat, Protestis for remeid of Law and Wilfull Errour aganis the said Affyse.

¹ ‘Aslowane’ in another place. ‘A’ was then a common prefix to many names in the south of Scotland, as Amulligan, Acannan, Alasone, Ahannay, &c.

[*Per Comitem de Ergyle, Justiciarium Generalem; et Magistrum Wilelmum Hairt, ejus Deputatum.*]

**Fire-raising — Burning the Place of Littlegill — Slaughter —
'Rapt' — Adultery — Theft, &c.**

Aug. 9.—THOMAS JARDANE of Birnok, Vmphra and Alexander Jardanes, his sones.

Dilaitit of airt and pairt of the treffonabill Raifing of ffyre, burning and distroying of the Place of Littillgill, with the haill laiche houffis, barnes and byres thairof, and haill inficht and pleniffing being thairin; and for the crewall Burning and flaying of vmq^{le} Alexander Bailzie of Littilgill, Rachael Bailzie, dochter to Mathow Bailzie, now of Littillgill, and vmq^{le} Achiefone, fervand to the said Mathow; the saidis vmq^{le} thre persones being all within the said place the tyme of the burning and distroying thairof; committit in the moneth of . . . the yeir of God, I^mV^c fourfcoir nyne yeiris. AND ficlyk, for airt and pairt of the Slauchter of vmq^{le} Robert Broun in Culter; committit in the moneth of Junij, the yeir of God I^mV^clxxxxvj yeiris: AND ficlyk, for airt and pairt of the Rapt and Raviesching of Katharene Johnnestoune, spous to Airme-frang of Arkiltoune; committit in anno I^mV^clxxxxv yeiris: AND for the cryme of Adulterie, committit be him with hir, contrair the tennour of the Actis of Parliament,¹ &c. &c.

Williame Creichtoun of Darnehauche and Johnne Carmichell younger of Potieschaw, as cautioners for the appearance of the pannels, vnlawit in the pane of tua hundreth merkis for ilk ane of thame. The Jardanes ordained to be denounced Rebels, and their moveables to be escheit, &c.

[*Mr Williame Borthuik, Justice-Depute.*]

Bestiality.

Sep. 17.—JOHNNE JAK, alias SCOTT, fervand to Thomas Boirthuik, in Roifling.

Dilaitit of the abhominabill and monstrouous fact of Sodomie,² &c.

SENTENCE. 'To be tane to the Castell hill of Edinburghe, and thair, he to be first bund to ane staik and wirreit thairat; and thaireftir, with the said meir to be brunt in asches, as he that, vpone his awin Confessioun, was convict of the crymes aboue writtin; and his haill moveabill guidis to be escheit to his Ma-iesteis vse,' &c.

¹ There are also numerous acts of theft of horses, cattle, sheep, &c. enumerated, but unnecessary to be noticed here.

² A case of a similarly disgusting description (the *only* instance in the early part of the Record) was purposely omitted, Sep. 1, 1570. The crime (Sodomy) is designated 'wyild, filthie, execrabill, detestabill and unnaturall.'—'Johnne Swan and Johnne Litster, smythis and seruandis to Robert Hannay,' the pannell, were likewise burnt on the Castle-hill of Edinburgh.

Slaughter.

Nov. 5.—WILLIAME JARDANE in Yle, Johnne Carsane in Erfik, Fergus Heroune at the Kirk of Glastrune, Johnne Aflowane in Tyllochbloun, Nicoll Dungalfoun in Claymadie, Robert M^cBay in the Maynes of Quithorne, James M^cconene in Caringdone, and Harie Stewart in Lagane.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Harbert Maxwell, callit *Harbert of the Coittis*; committit in September I^mV^{cl}xxxxvij yeiris.—Johnne Dumbar of Mynnieweik become plege and fouertie, that thai fall compeir befor the Justice, the xvij day of December nixtocum.

(Dec. 17.)—Johnne Dumbar vnlawit in the pane of ane hundreth merkis, for ilk ane of the faidis perfones: The Justice ordanit that thay be denunceit rebellis, &c., and all thair moveabill guidis to be escheit.

[*Mr Williame Hairt, Justice-Depute.*]

Slaughter.

Nov. 6.—HARBART MAXWALL of Kavenfe.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Sir Robert Maxwell of Dynwiddie, knycht.

PERSEWARIS, Archibald Maxwell of Cowhill,¹ Williame Maxwell, appeirand of Kowhill, Archibald Maxwell, his brother, Sir Thomas Hammiltoun of Monkland, knycht.

The Guidman of Kavenfe takis instrumentis of this entrie, and protestis for releif of his cautioner.

The Justice continewis the matter to the Air of Dumfreis, or soner, vpone xv dayis wairning. Johnne Broune, of the Land, cautioner.—Archibald Myller, bailzie-depute to my Lord of Moirtoune, of the Regalitie of Moirtoune, Protestis, that the Guidman of Kavenfe finding of Cautioun, preiudge nocht the previledge of my Lord of Moirtones Regalitie; quhilk the Justice admittit.

Mutilation and Demembration.

Nov. 23.—ROBERT M^cDOWELL and JOHNNE M^cDOWELL, fones to Peter M^cdowell of Machirmoir.

Dilaitit of airt and pairt of the Mutilatioun of Patrick Murdoche of Camladden and Alexander M^ckie, his fervand, of thair richt handis.

PERSEWER, Patrik Murdoche of Camloddene, Alexander M^ckie, his fervand, Sir Thomas Hammiltoun (knycht), Aduocat to our souerane lord.

PRELOCUTOURIS for the pannell, Mr Alexander King, Peter M^cdowell of Machirmoir, The Laird of Mondurk, Robert Dougall, merchand.

Peter M^cdowell of Machirmoir become pledge and fouertie for Robert and

¹ See Aug. 6, 1605.

Johnne M^cdowellis, his fones, that thay fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the Sherefdom of Kirkcud-brycht, or foner, vpone xv dayis wairning, to vnderly the Law,¹ &c.

[*Mr Williame Borthuik, Justice-Depute.*]

Slaughter.

Dec. 6.—DAVID MARSCHELL, messinger.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Richard Spens.²

Continued to the Justice-air of 'Air, tertio Itineris (vel super premonitione), xv dierum. Plegio, Roberto Stewart de Pitheveles.'

[*Mr Williame Hairs, Justice-Depute.*]

Murder — Shooting of Hagbuts and Pistolets.

Dec. 11.—JOHNNE JOHNNSTOUNE of Auchrynnie; James, Johnne and Patrik Forbes in Mylnebowie.

Dilaitit, accuset and perfewit off the crymes following, viz.

PERSEWER, Alexander Irwing, as fader.

PRELOCUTOURIS (for the pannell), Mr Laurence M^cgill, The Laird of Corfindae.

FORSAMEKILL as thai, with thair complices, with convocatioun of our fouerane lordis leigis, to the number of ten perfones or thairby, all bodin in feir of weir, with jakis, secreitis, steil-bonnetis, plait-flevis, speiris, lance-ftalfis, fuordis, quhingeris, gantilletis, hagbuttis, dagis and pistolettis, expresse prohibeit to be borne, worne, vsed or schot with, be dyuerse our fouerane lordis Actis of Parliament and Secreit Counfall, vnder dyuerse panes, mentionat thairintill; haifing consauet ane deidlie feid, rancour and malice, causeles, aganis vmq^{le} Robert Irwing in Baddis, laitlie, in the moneth of Februar last-bypast, come to the toun and landis of the Kirktown of Skene, quhair the said vmq^{le} Robert was for the tyme, accompaneit with certane freindis and nichtbouris in the cuntrey, at ane bankett, making mirrie, lipning for na harme, iniurie or perfute of ony perfones, bot to haif leuit vnder Godis peax and our fouerane lordis; thair, about ten houris at evin, vnder silence and clud of nycht, enterit within the said hous of the Kirktown of Skene, quhair the said vmq^{le} Robert was, as said is, and schot and dilaschet thair hagbuttis and pistolettis at him, quhairwith thai schot him throw the body; and thairestir, with thair fuordis, hurt and woundit him in dyuerse pairtis of his body. Off the quhilkis schotis and crewall ftraikis, the said vmq^{le} Robert depairtit this lyfe; and sa, was maist crewallie flane and mordreift, vnder nycht, be the saidis perfones; and thai, and ilk ane of thame, ar airt and pairt of the samyn Slauchter and Murthour, committit vpoun set purpois, prouisioune and foirthocht felony; in hie and manifest contempt of our fouerane Lord, his hienes auctoritie and lawis.

VERDICT. The Assyse, be the mouth of Robert Watsoune in Auchincloche, ffand, pronuncet and declairit, all in ane voce, the saidis Johnne, &c. to be Clene, Innocent and Acquit of airt and pairt of the Slauchter of the said vmq^{le} Robert Irwing; and haill remanent poyntis of the said Dittay.

¹ 'James Gordoune, burges of Kirkcubrycht (and 26 others) amerciat in payne of ane hundreth merkis,' each, for not appearing to pass upon the Assise of the M^cdowells. ² See Jul. 25, 1605.

Jamesucken — Slaughter.

Dec. 11.—Mr ROBERT IRWING of Moncoffer, David Gray in the Lyn, Alexander Maynie in Adiestoune, and Andro Many in Auchquhartene.

Dilaitit of the crymes vnderwritten, viz.

PERSEWARIS, Johnne Forbes of Mylnebowie, as father; Patrik Forbes, James Forbes, brether; Sir Thomas Hammiltoune of Monkland, Aduocat.

PRELOQUUTOURIS for the pannell, the Erle of Home, the Maister of Marschell, the Maister of Moirtoune, Mr Johnne Russell, Mr Robert Lyntoune.

FORSAMEKILL as thai, with thair complices, with convocatione, &c. laitle, vpon the tent day of Februar lastbypast, haifing consauet ane deidlie feid, rancour and malice aganis Johnne Forbes younger in Mylnebowie, be thame selfis and thair complices, of thair speciall causing, sending, hounding out, ressetting with the bluidie hand, airt, pairt-taking, command, assistance and ratihabitoune, come be way of Hame-fukkin to James Hallis duelling hous at the Kirk of Skene, quhair the said vmq^{le} Johnne Forbes was for the tyme, doand his liefull effaires and bussines, traifing na evill, &c.; and thair violentlie brak vp the durris of the said hous, enterit within the samyn, set vpon the said vmq^{le} Johnne, and maist crewallie and vnmerciefullie slew the said vmq^{le} Johnne, be geving of him of dyuerse bluidie woundis, in the wambe; and thai and ilk ane of thame ar airt and pairt, &c.

The perseweris passis *simpliciter* fra the persute of Mr Robert Irwing, for the crymes contenit in the Letteris.—The persones accuset denyis the haill Dittay, and haill circumstances thairof; alsweill of the Slauchter as of the beiring of pis-tolettis. Mr Johnne Russell, prelocutour for the pannell, declairis, that David Gray and Andro Many war absent fra the Slauchter; and David Gray, the tyme of the committing thairof, was sleipand in his bed, and knew nathing of the doing thairof, quhill¹ it was done.

VERDICT. The Assyse, be the mouth of the said chancillar, all in ane voce, stand the saidis David, &c. to be Clene, Innocent and Acquit, &c.

[APUD LYNLYTHGOW, Mr Williame Hairt of Levelandis, Justice-Depute.]

Treason—Declining the Jurisdiction of the Secret Council—Holding a General Assembly of the Kirk, after being charged, &c.

Jan. 10, 1606.—Mr JOHNNE FORBES, Minister at the Kirk of Airfurd, (Moderator,) Mr JOHNNE WELSCH, Minister at Air, Mr ROBERT DURIE, Minister at Anstruther, Mr ANDRO DUNCANE, Minister at Carraill, Mr ALEXANDER STRAUCHANE, Minister at Creiche, Mr JOHNNE SCHERPE, Minister at Kilmany.²

Dilaitit, accuset and persewit be Sir Thomas Hammiltoun of Monkland, kny^t,

¹ Until.

² As the circumstances are so very fully detailed in the course of the following proceedings, it seems to the Editor only to be necessary to refer the enquiring reader to *Wodrow's Church History*, pp. 506—516; *Hailes' Memorials and Letters*, James I. pp. 1—4; *Cook's History of the Church of Scotland*, II. 160, &c. An elaborate account of this remarkable struggle is also given, by the learned *Dr M'Crie*, in his interesting *Life of Andrew Melville*, Vol. II. p. 201, &c.

Aduocat to our fouerane Lord, for his hienes entreis, off the crymes of Treffone specifeit in the DITTAY following, viz.

FORSAMEKILL as, be the first Act of our fouerane lordis Parliament, baldin at Edinburgh in the moneth of Maij, 1^m.V^c. fourfcoir four yeiris, it is statute and ordanit, that our Souerane Lord, his airis and successeuris, be thame selffis and thair Counfallis, ar, and in tyme cuming falbe, Judges competent to all perfonis his hienes fubiectis, off quhatfumeuir eftait, degre, function or conditione that euir thay be, of spirituall or temporall, in all matteris quhairin thay or ony of thame falbe apprehendit, fummond or charget, to answair to sic thingis as falbe inquyret of thame, be our said Souerane Lord and his Counfall; and that nane of thame, quhilk fall happin to be apprehendit, callit or fummond, to the effect foirsaid, presume ar tak vpon hand to declyne the Judgment of his hienes, his airis and successeuris, and thair Counfall, in the premisses; vnder the pane of Treffone: NOCHTWITHSTANDING it is of veritie, that the saidis Mr JOHNNE FORBES, &c. being charget be our fouerane lordis Letteris, raisit at the instance of his Maiesteis Aduocat, for his hienes entreis, to compeir befor his Maiestie and the Lordis of Secreit Counfall, vpon the xxiiij day of October lastbypast, to haif answair for thair vnlauchfull and contemptuous convening, proceeding and halding of ane pretendit Generall Affemblie,¹ at Aberdene, the secund day of July lastbypast; and appointing of ane new Generall Affemblie, to be haldin at Aberdene, the last Tyfday of September thairefter; without the consent, and eftir the expres refuseall of the Laird of Lowriestoun,² his Maiesteis Commissioner, being than present in Aberdene; and in contempt of the charges of Hoirning, lauchfullie execute vpon the first day of the said moneth of July lastbypast, at the said mercait croce of the burgh of Aberdene, dischargeing, in our fouerane lordis name, all convening and halding of ony sic Affemblie, at that tyme and place, vnder the pane of rebelloun; and aganis the will and command of the Lordis of his hienes Secreit Counfall, signifieit to the saidis Ministeris be the Counfallis Letter than delyuerit to thame be the said Laird of Lowriestoun, befor thair said proceeding, beiring, that becaus thair Lordschipis vnderstuid that the halding of ane Affemblie, thair, at that tyme, wald heichlie offend his Maiestie, and be estimat be his hienes ane heich contempt, thairfor it was thair Lordschipis will and plesour, that the saidis Ministeris sould nocht hald ane Affemblie, at that tyme, nor mak ony indictione of ane new Affemblie, but suffer the samyn to desert. As lykwayis, the said Mr JOHNNE WELSCH, Minister at Air, being charget to haif comperit befor the Loirdis of his hienes Secreit Counfall, the said xxiiij day of October lastbypast, to haif answair for his vnlawfull refoirting to the said burgh of Aberdene, vpon the fourt, fyft and saxt dayis *respectiue*, of the said moneth of July lastbypast; and vnderstanding, as it was maist nottour and manifest to all men thair, how vndeutifullie and contemptuoullie the saidis Ministeris procedit, in the halding of thair said vnlauchfull pretendit Generall Affemblie, to the contempt of his Maiesteis authoritie, and of the directione of the Lordis of his hienes Secreit Counfall, in maner aboue specifeit; neuertheles, the said Mr Johnne Welsche, without all ordour, forme, necessitie or preceeding exampill, conveinit vnlawfullie with ane number of his complices, within the Kirk of the said burcht of Aberdene, the time foirsaid, and Ratiefeit and approvet the proceedingis of thair said bretherene foirsaid, in halding of thair said vnlauchfull Affemblie, and making indiction of ane new Affemblie, as said is, and tuik instrumentis thairupone. And in respect of the premissis, all the foirsaidis Ministeris, being charget as said is, to compeir befor the Lordis of his hienes Secreit Counfall, to haif hard and sene it ffundin and declairit, that thai had verrie contemptuoullie conuenit thame selffis, and proceedit in thair saidis actiones, the tyme foirsaid; and thairfor, the said Affemblie, and approbatioun thairof, declairit vnlauchfull, and sua to be repute and haldin in tyme cuming; and thay to be puneischit in thair perfonis and

¹ Of the Church of Scotland.

² Sir Alexander Straiton of Laurenstoun, knight, one of the Commissioners for the Union of England and Scotland, July 11, 1604. A Letter of Gift and Pension, for all the dayes of his lyfetye, of the blenche-deutie of the Lordschip of Scone, extending to 1000 merks, was Ratified by Parliament, July 11, 1606. Vid. *Acta Parl.* Straiton was appointed to represent the King, in Ecclesiastical Judicatories.

guidis, for thair vnlauchfull convening, halding and approveing of the foirfaid Affemblie, in maner aboue writtin : AND the foirfaidis Ministeris, all compeirand befor the faidis Lordis of Secreit Counfall, the faid xxiiij day of October lastbypast, to ansuer in the faid cause, the samyn being ane actionn maist competent and propper to the Jurisdiction of the Lordis of Secreit Counfall, because the samyn concernit the tryell and puneischment of ane heich offence, contempt of his Maiestie's authoritie, and disobedience of his Maiestie and Lordis of his hienes Secreit Counfall : Neuertheles, the foirfaidis Ministeris, and ilk ane of thame, treffonabillie declynit the judgement of his Maiestie and Lordis of his hienes Secreit Counfall *simpliciter*, be thair Declinatour, subscryuit be everie ane of thair handis, and gevin in be thame, in Judgement, befor the faid Lordis ; to the quhilk, it being replyit be the faid Aduocat, that the samyn sould be Repellit, in respect of the faid Act of Parliament, declairing all sic Declinatouris to be null, and the proponeris thair of to incur the pane of Treffone : And, in respect of the quhilk ansuer and reply, your faid Declinatour was repellit be the faidis Lordis of Secreit Counfall, all in ane voce : The faidis Ministeris, neuertheles, persistit sa obstinatlie thairin, that eftir the samyn was repellit be the faidis Lordis, as faid is, quhairby thai could nocht pretend ony probable dout or ignorance of thair Jurisdiction, the faidis Ministeris gaif in thaireftir, thair remanent Defenssis, in writt, vnder protestatioun alwayis, that thai adheirit to thair faid Declinatour : Be proponeing quhair of, as also be adheiring to the same Declinatour, eftir that it was Repellit, thay, and euerie ane of thame, hes committit Treffone, and sould incur the panes thair of.

PERSEWER, Sir Thomas Hammiltoun, Aduocat to our souerane lord.

PRELOCUTOURIS for the pannell, Mr Thomas Gray, Mr Thomas Hoip.

THE LORDIS OF SECREIT COUNSALL, vnderwritten, declairis thay will assist the Justice, as ASSESSOURIS in this cause.

ASSESSORS.

Johnne Erle of Montroise,	James Lord of Balmyrrienoche,	Mr Johnne Prestoun of Pennycuik,
Alexander Erle of Dumferme-	Secretar to his Maiestie, and	Collectour to his Maiestie,
ling, Lord Fyvie, Chancellor,	President of his hienes College	Sir Richard Cokburne of Clerking-
Johnne Erle of Mar,	of Justice,	toun, Lord Previe Seill,
Alexander Erle of Lynlythgow,	Mark Lord Neubottill,	Johnne Lord Murray of Tyllie-
George Erle of Dumbar,	Walter Priour of Blantyre,	bairne,
Patrik Lord Glameis,	Johnne Commendatour of Haly-	Sir Robert Meluill of Mourdocar-
Alexander Lord Elphingstoune,	rudhous,	ny, kny ^t ,
James Lord Abercorne,	Sir James Douglas of Quhitting-	Alex ^r Maister of Elphingstoune,
David Lord Scone, Comptroller	hame,	 Levinstoun of Kilsythe.
to his Maiestie,		

It is allegit be the pannell, that thai aucht to haif bene charget vpone xl dayis wairning, seing thay ar to be accuset for crymes of Treffone.—The Aduocat ansueris, that it is daylie practik, in bringing the persones put in waird to pannell, to put thame summerlie to ane Tryell ; and speciallie, the practik of the Laird of Bonytoun, quha was tane and put in waird for the breking of his fatheris house and cofferis, and steilling and away-taking of his fatheris eidentis, &c., was brocht fra the waird to the bar, and put to ane Affyse.

THE Justice Repellis the allegiance, and findis forder proces :—Quhairupone the Aduocat askit instrumentis.

It is forder allegit be Mr Thomas Hoip, prelocutour for the pannell, that this

matter can nocht pass to ane Assyse, vpon the declinatour gevin in be thame aganis the summondis persewit contrair thame, befor the Lordis of Secreit Counfall, in sa far as thay ar persewit vpon the first Act of Parliament, haldin in May 1584 yeiris; becaus the meaning and intentioun of the said law is only to establishe the Kingis Maiesteis royall power and Jurisdictione ouer all persones; quhilk the pannell, in all humilitie and submissioun, confessis: And albeit the said law appeiris to be generall, and vniuersallie to comprehend all matteris, yit the samyn can nocht be vniuersallie vnderstuid; becaus, quhairsoeuer a law speikis generallie, gif vpon the generall speiking, ony absurditie or incommodie may follow, quhilk may tak away former lawis, or confound distinct and diuerse¹ jurisdictiones, establischet be lawis of befor, the samyn, in that caise, man be restrictit to thais matteris that may fall vnder the compts of the law; quhilk speciallie aucht to haif place, quhair the matter is odious: But sa it is, gif this law war vniuersallie vnderstuid, of all matteris, it sould follow, that the Jurisdictiones of the Secreit Counfall, the Lordis of Sessioun, and Justice Generall, quhilkis ar supreme, Jurisdictiones Ciuill sould be counfoundit, insafar as the woirdis of this law being attendit, na persone being conuenit befor the Lordis of Secreit Counfall for ane cryme quhilk is competent to the Justice, or for ane ciuill debt, quhilk is competent to the Sessioun, nicht nocht, nor could nocht, without the perrell of the Law, allege² that the Lordis of Secreit Counfall ar nocht Judges competent in Criminall or Ciuill caussis: Bot this is sic ane inconuenient, and sa improper for the caise, mynd and intentioun of the law, that thair is na persone will mak questioun thairin: And as this war competent in the distinct Jurisdictione of the Lordis of Secreit Counfall, Sessiou, and Justice, sua the samyn is alse competent in Jurisdictione Ecclesiasticall, quhilk is an feuerall and distinct Jurisdictione be the self, haifing the Warrant and grund of the word of God, and being autorizet be his Maiesteis lawis; speciallie, be ane Act of Parliament maid in anno I^m.V^c.lxxix, ane vther in the lxxxj and lxxxij yeiris; sua that the pannell, being than conuenit befor the Lordis of Secreit Counfall, in ane matter quhilk was altogidder Ecclesiasticall, pertening to the Jurisdiction of the Kirk, quhairof the cheif poynt consistit vpoun the lawfulness or vnlawfulness of the Assemblie haldin be thame, thay nicht lauchfullie, without the perrell of this law, haif gevin in thar Declinatour, declyneing the saidis Lordis of Secreit Counfall, as nawayis Judges competent of the vnlawfulness or lawfulness of the Assemblie; and in doing thair of, thay could nawayis, nor can nawayis be decernit to haif committit aganis the said law; seing the said law, possibillie, can nocht be extendit bot to sic caisses quhilk hes nocht ane speciall, ane seperat, or distinct Jurisdiction, be the self;

¹ Separate.² Plead. This verb is almost universally made use of throughout these Records, and indeed in nearly the whole of the Forensic proceedings of that period, chiefly in that sense.

and quhair, it may appeir, that the pannell, in the Summandis befor the Secret Counfall, war nocht famekill ceitit vpon the vnlawfulness or lawfulness of the Assemblie.—As for the contemptuous convening being dischargit be his Maiesteis Letteris, aganis the requeist of the Lordis of Secret Counfall, and the Commissioner of the Kirk, quhilk matter mycht properlie appeir to pertene vnto the Jurisdictione of the Lordis of Secret Counfall, and that thairby the Declinatour man fall vnder the compas of this law; it is anfuerit, that it sould nocht be confidderit, quhat was the middis¹ quhairupone thay war convenit befor the Secret Counfall; bot the conclusioun of the Summondis man be attendit, seing it is the conclusioun and nocht the premisses that maks the natour of the actioun, quhairvpon ane cause and grund²; and vpon ane fact thair may concur of the law twa actiones or ma,³ quhilk ar dinoscet⁴ be their conclusiounes; as in an actioun of spuilzie, persewit ciuillie, the cognitioun thair of will pertene to the Lordis of Counfall, the lybell being sa formet, that it concludit the restitutione of the guidis spuilzeit; and vpon that same fact, the spuilgear may be convenit befor the Lordis of Secret Counfall, for Oppressioun, the Summondis concluding to heir and fie ordour tane with him for committing of the said fact; sa that albeit the fact be ane, yit tua diuerse conclusiounes produces tua feuerall actiones, the cognitioun quhair of pertenis to tua feuerall Jurisdictiones. And as this is trew, in all vther matteris Prophane, sa it is alyk trew, into the cause intentit and persewit aganis the pannell befor the Lordis of Secret Counfall, quhairin it aucht nocht to be respectit, quhat was the deid quhairupone thay war summond, bot it aucht to be confidderit quhat the summondis concludit: Sa that albeit the allegit fact or deid committit be thame mycht be puneschet be the Secret Counfall, and sa pertene to thair Jurisdictione; yit, seing the conclusioun beiris nocht allanerlie for the said fact, quhilk gif it had bene sa confaet, the pannell could nevir nor would nevir haif declynit, lyk as, *in facto*, thay haif nocht declynit the samyn; bot concludis to heir and fie the Assemblie haldin be thame vnlauchfull: Quhilk conclusioun makis the matter to be altogidder Ecclesiasticall, only subiect to the Jurisdictione of the Kirk establischet be his Maiestie and be the lawis of this cuntrie; the actioun being comptit of that nature, quhair of the conclusioun is, of all deutie and conscience thay aucht and mycht haif declynet the samyn, without the perrell of the said law; and thairfoir, &c. *Secundlie*, It is allegit, that the Act of Parliament can nocht be extendit to the Declinatour vset and proponit be the pannell; becaus in all Lawis, the intentioun and reffone of the Law aucht to be attendit; bot sa it is, that the intentioun and reffone of this Law was only maid, in sic matteris, quhair ony persone was summond *super inquirendis*, as appeiris be the verrie expres woirdis of the Law, saying, in all matteris quhairin fall be apprehendit, &c. sua that the

¹ Medium, means.² Illegible.³ More.⁴ Lat. *dignoscere*, distinguished, judged of.

law being only confauet vpon ane fingular¹ caise, it can na wayis be extendit to ony vther caiffis or matteris, quhilk ar nocht expreffit in the Law; and confequentlie, can nocht be extendit to the actiounes perfewit aganis the pannell befor the Lordis of Secreit Counfall, becaus thai war nocht perfewit *super inquirendis*, bot vpon ane perticular fact and lybell; and the reffone of this Law, quhairfor it fould nocht militat *super inquirendis*, becaus gif ony perfone, being fummond *super inquirendis*, wald declyne the Lordis of Secreit Counfall, the fact nocht being knawin to him, it war ane manifest contemptuous Declinatour of his Maiefties fouerane authoritie, and ane exeilling of his perfoun fra his Maiefties maift royall power, quhilk war maift worthie of the pane of Treffone; fua that this reffone, nocht being militat in the caufe of the perfute perfewit aganis the pannell befor the Secreit Counfall, the faidis perfones, in vring of thair Declinatour, hes nawayis fallin vnder the compas of the faid Law. And forder, the faid Law can nocht be perticulerlie extendit aboue the perticuler caise mentionet thairin till *quia odiosa sunt restringenda*; and that, be the consent of all Doctouris, is countit odious, quhilk is aganis the difpofitioun of the Cowmoun Law, or quhilk may preiudge a thrid perfones lauchfull rycht; quhilk is the nature of this Law; feing by it the puneifment of Treffone is imponet² vpon ane fact, quhilk nather be the Cowmoun Law, nor be the Lawis of this cuntrey is treffonabill. *Thridlie*, the pannell can nawayis be accuset for committing of Treffone, be proponing of the Declinatour, becaus, be the Law, the proponeing of the Declinatour is nocht comptit ane treffonabill deid, bot only prohibeit to do the fame, vnder the pane of Treffone; fa that the Affyse, without committing manifest Errour, can nocht convict thame of the faid fact, as Treffone. *Finallie*, the pannell can nawayis pas to the knowlege of ane Affyse, for the Declinatour, be vertew of this Act of Parliament, becaus, fen the making thair of, viz. in the moneth of . . . , anno 1592, all lawis, actis, ftatutes and ordinances, quhilk may derogat to the Jurisdiction of the Kirk ar abrogat and annullit; lyk as, be the fame Law, it is declairit be his Maieftie and the thrie Eftaitis, that the foirfaid Act of Parliament quhairupovn the pannell is accuset, being the 129 Act of the Parliament haldin in Maij 1584, fall nawayis be preiudiciall, nor derogat ony thing to the previlege that God hes gevin to the spirituall office-beiraris in the Kirk, concerning heidis of Religioun, matteris of errofie,³ excommunicatione, collatioun and deprivatione of Ministeris, and vtheris ficlyke effentiall cenfours ecclesiasticall, expreflie groundit and haifing warrand of the woird of God; be the quhilk Law, the Kingis Maieftie and the Eftaitis hes declairit, that the faid Act of Parliament quhairupone the pannell is accuset, fall nawayis be preiudiciall to ony Ecclesiasticall effentiall cenfours, foundit vpon the woird of God, being of that nature quhair of the particuleris preceding thairin contenit ar: Bot trew it is, that

¹ Special, individual.² Imposed.³ Heresy.

the Generall Assemblie is an essentiall Ecclesiasticall cenfour, expresse warrandit be the woird of God, and be that same Act in the fourscore tuelf,¹ Ratiefeit and approvin be his Maiestie, and decernit to be lauchful and Godlie in the self, and is of the lyk natour with the particuleris contenit in the said Act; becaus the intreiting of the heidis of Religioune, matteris of errasie,² excommunicatioune, collatioune and depriuatioune of Ministeris, ar proper pairtis of the General Assemblie, and of the office and Jurisdiction of the same, *et ejusdem est nature cum suis partibus*: And thairfoir, the pannell, in the proponeing of the said Declinatour, haifing done nathing bot that quhilk pertenet properlie to the Jurisdictione of the Kirk, in desyreing the questioune anent the said Generall Assemblie to be remittit to the Kirk, thay did na wrang in proponeing of the said Declinatour, nor yit can the said Declinatour be drawin in question, be vertew of the said Act, quhilk be the foirsaid posteriour Act, in that poynt, is *tacite* abrogat be ane expresse declaratioune, that the samyn fall nawayis be extendit to the essentiall cenfouris of the Kirk; sua that the pannell was *in optima fide*, in respect of the said posteriour Declaratioun, to vse the benifeit of the samyn; and thairfoir, &c.

Thaireftir, the pannell for cleiring to his Maiestie of thair intentioun in vseing of the said Declinatour, hes declairit, and be thir presentis declairis, that thair nawayis thairby meanit to exeme³ thame selffis fra ony lauchfull subiectioun to his Maiestis royall authoritie, nor yit frome the Jurisdiction of the Lordis of Secreit Counfall, in ony thing quhairin ony vther subiect is subiect to thair authoritie; bot only, to haif that cause, tuiching the lauchfulnes or vnlawfulnes of the said Generall Assemblie, being ane mater meir spirituall, to be judget be his Maiestie and the Kirk, as only Judges competent thairto, accoirding to the law of God, and establischet Actis of Parliament within this realme; declairing be thir presentis, that his Maiestie sould judge Ecclesiasticall matteris with Ecclesiasticall persones, lyk as he judges Ciuill matteris with Ciuill persones; and acknowledgeing thame selffis, in all matteris Ciuill or Criminall, to be subiect to his Maiestie (and) all the lauchfull Jurisdictiones establischet for sic caissis within this land; vnto the quhilkis, in all humble reuerance, thay submit thame selffis; lyk as, in all Ecclesiasticall matteris, thair ar reddie to be judget be his Maiestie with the Generall Assemblie, and vtheris establischet ordouris of the Ecclesiasticall Jurisdictiones.

IT IS ANSWERIT to the *first* allegiance, that the Actis of the Parliament lxxix and lxxxj can mak na derogatioune to the Act of Parliament maid in Maij, anno 1584, quhairupoun the Dittay is foundit, being posteriour to thame, geveing expresse Jurisdictione to the Kingis Maiestie and Lordis of his hienes Secreit Counfall over all persones, ather spirituall or temporall, accoirding to the tennour of the said Act: And as to the nature of the caus persewit aganis the pannell

¹ A.D. 1592.² Heresy.³ Exempt, free.

befoir the Loirdis of Secreit Counfall, accoirding to the tennour of the Dittay and Decreit of Secreit Counfall producet, the Lordis of Secreit Counfall was maift competent Judges to the haill contentis thair of, alſweill anent the tryell and puneifchment of thair contempt, as of the vnlawfulnes of thair Affemblie, at that tyme and place, thay being expreflie difcharget be his Maieſteis Letteris of Hoirning and be the Counfallis command, in writt, to hald na Affemblie at that tyme, or indict ane new Affemblie to ane new tyme and place: Lyk as, thay haifing proponit thair Declinatour befoir the ſaidis Lordis, the ſamyn was Repellit, and Decreit gevin in the haill cauſe; in reſpect quhair of, the Dittay ſtandis relevant.—To the *ſecund* allegiance, anſueris, that the woirdis of the Act of Parliament, anent Declinatouris to be proponit in actiones *ſuper inquirendis*, befoir the Secreit Counfall, can nocht exeme the caufe contravertit, fra thair Jurifdictioun; albeit that fauour was ſchawin to the pairtie, to foirwairne thame of the cauſe thai war to anſuer: Bot generallie, the Law is vnderſtand, and hes alwayis bene interpretit, that all Declinatouris proponit in matteris competent to the Jurifdictioun of the Counfall ar of thame ſelffis treſſonabill, as was ſolempnatlie decydet in the Kingis Maieſteis awin preſence aganis vmq^{le} Mr Daid Blak: And thairfoir the Declinatour proponit be the pannell, and adheirit to be thame, eftir the ſamyn was repellit be the Counfall, fallis vnder the woirdis, meaning and tennour of the Act of Parliament.—To the *thryd* allegiance, anſueris, that all crymes ordanit to be pwneift be the payne of Treafoun ar treſſonabill.—To the *ffourt* allegiance, anſueris, that the claus of the Act of Parliament, in the yeir of God I^m.V^c.lxxxxiij, being ane exceptioun frome the Act of Parliament, in the yeir of God 1583, confermis the ſamyn Act, in all heidis nocht expreflie exceptit; lyk as, the exceptioun is only of heidis of Religioun, materis of erraſie, excommunicatioun, collatioun or deprivation of Miniſteris, or ſiclyke eſſentiall cenſouris, ſpeciallie groundit and haifing warrand of the word of God; and it is of veritie, that the keiping of ane Affemblie at ane certane tyme and place, and appointing of ane new Affemblie, aganis the Kingis Maieſtie expreſ charge vnder the payne of rebelloun, and aganis the will and command of the Counſale, and aganis the diſaffenting of his Maieſteis Commiſſioner, is nather ane heid of Religioun, mater of erraſie, excommunicatioun or eſſentiall cenſour; and thairfore, is nocht exceptit fra the ſaid Act, bot fallis vnder the prohibitioun and danger thair of: And thairfore, nochtwithſtanding of the alledgance and declaratioun foirſaid, the Dittay ſould be putt to the knowlege of ane Affyſe.

It is lykwyiſe allegeit be the Pannell, that the Juſtice can nocht putt thame to the knowlege of ane Affyſe, for Treafoun, becaus thay ſtand at the horne vnrelaxit.—The Aduocat anſueris, that the Juſtice hes admittit the preloquutouris to compeir in the ſaid mater; and thairfoir the Dittay for Treafoun ſould be putt to ane Affyſe.

THE JUSTICE admittit the said preloquutouris to compeir as preloquutouris in the said mater : And with auise of the haill Affessouris, in ane voce, in respect of the anfuieris maid be my Lord Aduocat, Ordanis the Dittay to be putt to ane Affyse.—Quhairupoune my Lord Aduocat askit instrumentis.

ASSISA.

Sir Johnne Home of North-Ber-	Sir Archibald Sterling of Keir, kny ^t ,	Gawin Home of Johnnescleuch,
uik, knycht,	Johnne Levingstoune of Donypace,	Thomas Levingstoune of Pantoun,
Sir George Home of Broxmouthe,	James Schaw of Sauchie,	Ro ^t Levingstoune of West-Quarter,
knycht, elder,	Mark Swyntoun in Innerkething,	James Gib younger of Carriber,
Sir James Forrester of Carden,	Harie Stewart of Cragiehall,	Alexander Home of Rentoune,
knycht,	George Home of Deanes,	Sir Patrik Home of Polwort, kny ^t .

The Aduocat askis instrumentis of the admitting and sueiring of the Affyse, and eftir accusatioun of the personis on pannell, be Dittay.—The Aduocat, for verificatioun of the Dittay, produceit the Declinatour, subscryuit with thair handis acknowledgeit be thame selff in Judgement ; Repetit the Act of Parliament ; produceit the Decreit of Secreit Counfall, the charge of Hoirning, and the pretendit proces,¹ subscryuit be the pretendit Moderatour and the pretendit Clark of the Generall Assemblie, granting the resait of the Counfallis Missiue, of the tennour lybellit, and the Declaratioun of his Maiesteis Commiffioner, bering that he disassentit fra thair haill proceeding ; and seing my Lord Justice, be the auise of the haill Counsale present, hes discusst the pannellis haill defenffis, and ffund the Dittay relevant ; and that thair restis na forder to the Affyse bot to declair, quhidder the factis contenit in the Dittay haif bene committit be the pannell or nocht, the samin fact being sa manifestlie provin be the writtis produceit, and nawyise denyit be the pannell, bot ratifeit and renewit in Judgement, as the proces beris ; in caise thay acquit the pannell, the Aduocat protestis for Wilfull Errour and remeid of Law, with all regour.—The pannell protestis for Errour aganis the Affyse, in caise thay ffyle thame of Treasoune.—The Aduocat askis instrumentis, that the pannell confessis to gefing in of the Declaratour.

VERDICT. The Affise, be the mouth of the said Harie Stewart of Craigiehall, chancellor, ffand, pronuncet and declairit the saidis fax Ministeris, and ilk ane of thame, to be ffylet, culpable and convict of the treffonabill declyneing of the Judgement of his Maiestie and Lordis of his Secreit Counfall, conforme to the Dittay aboue specifeit.

WARRANT and DOME of BANISCHEMENT² pronuncet aganis THE MINISTERIS, in Pretorio de Lynlythgow, xxij die mensis Octobris, 1606, per Magistrum Willielmum Hairt de Prestoune, Justiciarium Deputatum.

[Oct. 23.]—COMPEIRIT M^{ris} Thomas Henderfoun and Robert Lyntoune,

¹ The procedure which took place at their Assembly.
to insert the ' DOME' here, rather than under its proper date.

² It has been thought most convenient

substitutis to our fouerane lordis Aduocattis, and producet to my Lord Justice his Maiesteis Warrant; quhilk the Justice caufit be oppinlie red in Judgement, and ordanit the samyn to be infert in the buikis of Adiornall; quhair of the tennour followis.

JAMES R.

WHEARAS, in our Justice-Court, held at Lynlythgow, the tenth of Januare lastbypast, Mr Johnne Forbes, &c. war convicted of the cryme of Treffone, for pair contemptuous and treffonable declyneing pe Judgement of us and pe lordis of our Secreit Counfall, *simpliciter*, be a declinatour subferyuit with pair handis, and gevin in be pame, in Judgement, befor the saidis Lordis of our Counfall; as in the said proces of Convictione at mair lenth is contenit: And pe pronunceatioun of the Dome being by our Justice, vpon grave and wechtie respectis continewit, till our farder plesour war knawin pairin, We now confidering pe grit insolence of that proud contempt, and quhat dangerus exampill it nicht be, if it fould pas vnpwneifched, haveing, in our accustomed lanity, gevin to thaise declared Tratouris moir pan sufficient tyme to haif implored and maid humble sute for our mercie; 3it, finding in thame nathing bot a continwing obdured obstinacie and wilfulnes, without likliehoid or appeirance of resipiscence and repentance in thame, for pair former committed soleis: And albeit pe gritnes of pair offence, and speciallie in men of that function (quhais lyves fould be lanternes and lichtis to vperis, to cary thame selvis in all deutie and obedience, and pairfoir pair ouersightis requyreing pe moir feveir animaduerfioun and pwneifchment,) hath most iustlie demereited the extremitie of the regour to be inflicted vpon thame, for ane exampill to affray all vperis to attempt pe lyk; 3itt, becaus heirtofoir that Law haith nevir bene putt to executioun, quhairby sum men may perhaps pretend that pai had pe moir probabill ignorance pairof, (albeit in reafone the same can be no excuse,) We haif with our wounted clemency, vpon that respect only, spared to inflict the rigour of the Law, at pis tyme: It being our Will and plesour, that our Justice or his depute fould fence and affix a Justice Court, to be held at Lynlythgow, or ony vper pairt else that our Counfall fall think expedient, the xxij day of October nixtocum, and pair cause Dome to be gevin out against the saidis traytouris, to be BANISHED all our dominiones, during all pe dayis of pair naturall lyves; vnder pane of daeth: And pe Dome being pronounced, oure Will and plesour is, that pai be returned to pair wairdis, thair to remane for pe space of ane moneth, for making pair preparatiounes for pair depairtour; befor pe expyreing quhair of, gif pai do nocht depairt, wind and wedder ferveing, oure Will and plesour is, that pe ordinarie death vsuallie inflicted vpon Traytouris be directed to be execute vpon thame: And gif pai fall nocht depairte within pe said space, or being depairtit, fall retorne into oure dominiones, without our Licensse, thay fall incur pe pane of death, and all vper panes dew to persones convict of Treffone. Quhairanent these presentis fall be to our said Justice a sufficient Warrant. AND becaus this our spare dealing and grit clemencie, extendit towardis those aboue named offendouris, in this thair so haynous a cryme and offence, may perhappes move in sum vtheris sum presumptioun to think, that for trespassis of this qualitie no gritter rigour will be heireftir vsed: ffor removeing of which pair foolische opinione and conceate, and that everie ane may haif notice of our full determinatioun in any fuche lyk case heireftir, Oure Will and plesour is, that in our said Justice Court, to be keipit pe said day, for pronounceing of pe said Dome, speciall intimatioun be maid, in open Court, by our said Justice, to all our leigis pair present, that it is our resolutioun, that gif any heirefter fall offend, in fuch a heich trespass, that pai fall be proceidit against with all feueritie; and that the death dew vnto Traytouris fall be inflicted vpon thame with all rigour; the example of this our present lenitie at pis tyme, nevir remayning any motiue to induce ws to schaw any fuch clemencie to fuch as fall commit pe lyk offence heireftir: And our will is, that pir presentis be recoirdit in the buikis of Adiornall, and that publicatioun be maid heirof at the mercait croce of Edinburghe, and all vper places neidfull. GEVIN at our Court of Hamptone Court, the xxvj day of September, 1606.

Accoirding to the quhilk Warrant, the said Justice-depute, be the mouth of Henrie Wilfoune, dempster of Court, pronuncet dome, and decernit and ordanit the saidis perfonas to be Banifchet all our fouerane lordis dominiones, during all the dayis of thair naturall lyves : And ordanis thame to returne to thair wairdis, thairin to remane for the space of ane monethe, for making of thair preparatioun for thair depairtour ; befor the expyreing quhair of, gif thay depairt nocht, wynd and wedder ferving, the said Justice-depute, accoirding to the said Warrant, decernis and ordanis the ordinarie daeth vsuallie inflictit vpone perfonas convict of Treffone to be execute vpone thame : And gif they fall nocht depairt within the said space, or being depairtit, fall returne within his hienes dominiones without his Maiesteis Licence, decernis and ordanis thame, accoirding to the said Warrant, to incur the pane of daeth, and all vther panes vsuallie inflictit vpone perfonas convict of Treffone : Quhilk was pronuncet for dome.

[*Mr Williame Hairt of Prestoun, Justice-Depute.*]

Murder of the Warden of the West Marches.

[THE Clan or 'Name' of ARMSTRONG was perhaps the most distinguished of the warlike Thieves of the Scotch Border, having possession of the largest portion of Liddisdale and the Debateable Land. For the exploits of many individuals of this name, reference may be had to the Works of Sir Walter Scott, and especially to the Introduction to the Border Minstrelsy, and the Notices prefixed to '*Johnie Armstrong*' and '*Kinmont Willie*,' &c. The almost unparalleled act of bravery of the LAIRD OF BUCCLEUCH, who achieved the deliverance of *Kinmont Will* from the Castle of Carlisle, in April 1596, has been adverted to in a former part of this Collection.¹ A very interesting 'Relation' of this remarkable feat, taken from a contemporary MS., is also given in the Minstrelsy,² which the reader will find well worthy of perusal. This event is likewise narrated in the Anonymous History of Scotland, already quoted;³ and as his Narrative is very brief, it has been thought proper to preserve a transcript here.—'Now Auld WILL ARMISTRANG of *Kinmont* being tane be Inglis men, and is wairdit in the Castell of Cairleill, within ane strait priffoune, and yrnifs on him ; and being to thoill the tryall of the Law, knew perfytlie that thair was no saifty for him. He vrittis in Scotland to his freindis, to sie gif thay culd mak him releiff. Quhairupoun THE LAIRD OF BALCLEWCH past within⁴ thrie scoir tenne horse to the saidis Castell, and with ladderis clam the fame, and brak the priffoune ; and bringand the said Williame Kinmwnt hame with him, he cauffit blaw his trumpett and cry sum slughorns,⁵ puttis the toune and cuntry in sic ane fray, that nene durft stirr: Quhairby, he brocht the said Will Kinmont away, but⁶ ane straik, to the grit honour of his cuntry. This wes done the sext day of Apryll, 1596.'

The Murder of SIR JOHN CARMICHAEL, knight, the Warden of the West Marches, sealed the fate of many of the Armstrongs, and led to the adoption of measures of the utmost severity against all those of the name who were thereafter convicted, or even suspected, of mal-practices.⁷ On Nov. 14, 1601, Thomas Armstrong, 'sone to Sandeis Ringane,' was convicted for being accessory to this barbarous act of butchery, and is the first instance on record, in Scotland, of a criminal having been hung in chains. The above mentioned Anonymous Historian⁸ narrates the event very quaintly, in the following terms. 'Now the Bordouris being werry euill brokin, thair war dyuerse Reidis⁹ in all fydis, bayth be Scotland

¹ Vol. I. pp. 363—365.
Library, A. 4. 35.
pp. 450, 451, and 452.

⁴ Under the number of.

⁸ MS. Advocates' Library.

² See *Scott's Poetical Works*, 8vo. 1821, Vol. I. p. 180.

⁵ Slogans, war crys.

⁶ Without.

³ MS. Advocates'

⁷ See Vol. II.

⁹ For Raids, hostile incursions.

and Inland; and THE ERLL OF ANGUS, heaffand gewin the famin owir, quha wes Wardane, the King makis THE LAIRD OFF CARMICHAEL Wardane; quha, finding the *Airmistrayngis* to be the grittest occasioun of the trubbillis, wes myndfull to pvneise sum of thame, quha wes notorius theiffis; and thay heaffing intelligense thairroff, fendis to him ane broder of *auld Williame Airmistrayngis of Kenmunt*, quha wes callit Alexander Airmistrayng, *alias Sandeis Ringand*. This Ringane being in his cumpany, and entiring in conferance with the Wardanis, ffindis that thair wes na frendschip to be luikit for at his handis; and also, thair wes sum young menne with the Wardane, quha begane to mok this *Ringane*, be steilling out of his fuord, and putting 3 okis of egis in the skabert, quhairby the famin wald not draw; quhilk he perfaiffing, said, that "he awowit to God, that thai fuld fie his fuord outt, and (if) he and thay vent on the grond quhair he mycht be pairtie!"¹ And cuming hame to his awin hous, in this readge, sayis to his sonnis, that he wes "maid schame of som," awowing to God, "to be equall with the famin!" And knawing THE WARDANE to ryd on the morne, he and his sonis settis for him with sum wtheris, and slayis him be the schott of ane hagbutt. And thaireftir, for the famin caus, this *Ringane* and his sonis wer tane and executt to deith, as Tratouris to his Maiefty, be putting handis in the Kingis Wardane. This was done the 16 day of Junij, yeiris 1600.

Sir Walter Scott supposes the well-known verses, '*Armstrong's Good Night*,' to have been composed by Thomas Armstrong, who is called by him '*Ringane's Tam*,' previous to his execution, Nov. 14, 1601. The reader is referred to the *Minstrelsy* for the exploits of the Armstrongs, and of other Worthies of the Scottish Border, whose names frequently occur in the Criminal Records.]

Feb. 13.—ALEXANDER AIRMISTRANG, callit *Sandie of Rowaneburne*.

Dilatit and accuset be Johnne Commendater of Halyruidhous, sone-in-law to vmq^{le} Sir Johnne Carmichell of that Ilk, knycht.

FORSAMEKILL as he, accompaneit with Thom Airmistrang, sone to *Sandeis Ringane*,² the said Ringane and vtheris, his sonis and complices, to the number of sewintene personis, or thairby, commoune thewis and tratouris, the maist pairt being on horsbak, and he on fute; came all bodin in feir of weir, with hagbuttis and pistolettis, lance-ftalffis and vtheris wappinnis, invasiue, to the Murthumleis; quhair thai, in the moneth of Junij, I^m.Vj^c., altogidder consultit and dewyfit the crewall and treasonabill Slauchter of the said vmq^{le} SIR JOHNNE CARMICHELL of that Ilk, knycht, WARDEN OF THE WEST MARCHES;³ and for performance thairroff, past fra Murthumleis to Coloneheid, quhair he and his complices lay att wait for the said vmq^{le} Sir Johnne passing by to ane Court; and as he wes, in sobir and quyet maner, passand by to the said Court, vpone the . . . day of the said moneth of Junij, quhilk wes to be hauldin in Lochmabene, he and his complices sett vpone him att the Raeknowis, quhair, with schottis of hagbuttis and pistolettis, thay schot him throw the body, and crewallie slew and mordreift the said vmq^{le} Sir Johnne Carmichell, being his Maiesteis Wardane for the tyme: And the said Alexander Armstrang wes airt and pairt of the said

¹ Where he might avenge his own quarrel.

² See Vol. II. p. 363, where he was sentenced to be 'hangit vp in *irne-cheinis*,' after having his right hand struck off.

³ Robert Birrel gives the following notice, in his Diary, Jul. 11, 1600. 'The Laird of Carmichael bureit; quha was slaine be the Armstrangis and Carliles, he doing and executing his office of Wardanrie, vpone the 16 of Junij befor.'

crewall and treffonabill Murthour, he being than vpoun the ground with his complices, att the committing of the said vngodlie fact : To the takin¹ he confest the famin be his depositiounis ; lyke as, he, be Depositioun, declarit him selff to be innocent of ony vther haynous crymes, except the foirsaid innocent² Slauchter of the said vmq^{le} Sir Johnne ; quhilk he declairit he wes brocht vpoun aganis his will. ITEM, for commoun Thift, commoun Reflett of thift, inputting and out-putting of thift, fra land to land, fra countrey to countrey, baith of auld and new.

PERSEWER, My Lord (‘ Johnne Commendater’ of) Halyrudhous.

ASSISA.

Robert Mcbrair of Almagill,	Andro Ker of Mylnerig,	Michell Adamefoun, flescheour in
Johnne Weir, brother to Auchtie-	Gylbert Halyday, merchand bur-	Edinburghe,
fardell,	ges of Edinburghe,	Williame Mow, hatt-maker thair,
R ^t Johnnestounne, burges of Ed ^r ,	Allane Cathcart, staibler thair,	Andro Greir, burges thair,
Vthrid Mcdouell of Mondurk,	Robert Dalzell, Y ^r of that Ilk,	Alexander Bowie, staibler thair,
. . . . Hunter of Polmude,	James Johnnestounne or Wastraw,	J ^{on} Steill, sumtyme of Houftounne.

VERDICT. The Assyse, be the mouth of the said James Johnnestounne, chancellor, ffand, pronunceit and declarit the said Alexander Armstrang to be ffylit, culpabill and convict of airt and pairt of the crewall Slauchter and Murthour of the said vmq^{le} Sir Johne Carmichell, conforme to his Depositiounis. And als, to be ffylit, culpabill and convict of commoune thift, commoune reffett of thift.

SENTENCE. To be tane to the mercat croce of Edinburghe, and thair to be hangit vpoune ane gybet quhill he wes deid ; and all his movabill guidis to be escheit and inbrocht to our fouerane lordis vse, for the said crymis.

Slaughter — Shooting Hagbuts, &c.

Feb. 21.—ADAME BROUNFEILD, in Gordone maynes.

Dilaitit for airt and pairt of the fellone and crewall Slauchter of vmq^{le} Thomas Cranftoun ; committit vpone the xxij day of July, the yeir of God I^m.V^c. fourfcoir fyftene yeiris, within the boundis of the landis of Moriestoun, at that pairt thairof callit the Kame, be the schot of ane hagbut throw his body ; vpone set purpois, prouisioun and foirthocht felony.

PERSEWER, Johnne Cranftounne, as brother.

PRELOCUTOURIS in persute, Sir Johnne Cranftounne of that Ilk, Mr Thomas Cranftounne.

PRELOCUTOURIS for the pannell, Mr Williame Oliphant, Aduocat, James Brounfeild of Nether Maynes.

It is allegit be the pannell, that he can nocht be put to the knowlege of ane Assyse, vpone this Dittay, and crymes contenit thairin ; becaus the Kingis Maiestie hes grantit his Remiffiounne, vnder the Grit Seill.³—It is anfuerit be the persewer, that this Remiffiounne, anent the tyme of the committing of the said (slauchter) lybellit, meittis nocht the tyme specifeit in the Dittay.⁴

¹ In token or testimony whereof. ² *Sic.* ³ Apud Edin. Dec. 20, 1605. ⁴ ‘ In menfe . . . 1594, commiss.’

THE Justice admittis the Remiffiounne product.

It is allegit be the perfewer, that the Remiffioun vset be the pannell, is contrair to the Act of Parliament, ordaning na Remiffiounne to be grantit, without satisfiounne of pairtie, and productione of ane Letter of Slanes, vtherways to be null.—Anfuerit, the alledgeance aucht to be repellit, in respect of the Remiffiounne; and offeris cautione to satisfie the pairtie, conforme to the Lawis of this realme.—James Brounfeild in Nether-maynes, Johnne Brounfeild in Gordone-maines and the said Adame (become) cautione, coniunctlie and feuerallie, for satisfiounne of pairtie, &c.

Slaughter — Shooting Hagbuts and Pistolets.

Feb. 25.—HEW CAMPBELL in Mauchline, sone to vmq^{le} Thomas Commandator of Halywoid.

Dilaitit of airt and pairt of the fellone and crewall Slauchter of vmq^{le} Johnne Glencorfe of that Ilk, be schottis of hagbutis and pistolettis; committit vpone the xiv day of September, the yeir of God 1581 yeiris, vpone the ground and landis of Gribtounne; vpone set purpois, prouifioun and foirthocht fellonie.

PERSEWERIS, Iffobell Glencorfe, sifter; Robert Glencorfe, neir kynsman.

PRELOCUTOURIS for the pannell, Mr Robert Lyntoun.

Tuik him to our fouerane lordis Remiffiounne, for the said cryme. ('Apud Edinburgh, Feb. 14, 1606.') Williame Campbell in Grienock-maynes, Alexander Nisbet of Greneholme, and the said Hew, become cautione and fouertie, coniunctlie and feuerallie, to satisfie the pairtie, as law will.

Slaughter.

Feb. 26.—WILLIAME M^cINTOSCHE, sone to the Laird of M^cIntosche; Angus Williamfoune of Termet; Donald M^cintofche, sone to Perfone M^ccondowie; Williame M^cJames, sone to James Glas; Angus M^cRannald, sone to vmq^{le} Johnne M^cAngus; Lauchlane Williamfoune, eldest sone to Angus.

Dilaitit of airt and pairt of the slauchter of vmq^{le} Alexander Anderfoune in Balnaglak and vmq^{le} Johnne Barrone thair.

PERSEWER, Johnne Elphinstoune of Balnaglak, as neir kynsman to the saidis vmq^{le} perfones.

The said Johnne Elphinstoune, perfewar, for himself, and takand the burding on him for Thomas Anderfoun, brother to vmq^{le} Alexander Anderfoune, past fra the perfute of the perfones on pannell, *pro loco et tempore*. Lauchlane M^cintofche of Dynnachten becomes fouertie for the entrie of the perfones on pannell, the thrid day of the air (of 'Inuernese,') or soner, vpone xv dayis wairning; vnder the panes contenit in the Actis of Parliament.

Breaking the Place of Kilbirnie — Theft, &c.

Feb. 26.—JOHNNE CRAUFURD, sumtyme in Auchincloch, now in Auchinbothie.

Dilaitit of airt and pairt of the Breking of the Place of Kilbirnie; and steilling of certane eidentis and abulzimentis, pertening to Johnne Craufurd of Kilbirnie, &c. viz.

FORSAMEKILL as he, accompaneit with Thomas Wilsoun in Wallase, with divers vtheris thair complices, cownoun thewis, in the moneth of Nouember, the yeir of God Im.Vc. and twa yeiris, come to the Place of Kilbirnie, the Laird being than furth of this realme, and his Lady being than in Grenok, ten myle distant fra the said place of Kilbirny; and thair, vnder sylence and cloud of nycht, brak the said Place, at the North syde thair of, enterit within the famin, and thiftioullie stall, concealit, reffett and away-tuik, furth thair of, and furth of the cofferis than standing within the said Place, ane figuret velvet gowne, ane blew bend of taffetie, ane ryding cloik and skirt of broun cullerit claith, wrocht with siluer pafment; ane blak velvet dowblet, cuttit out and wrocht with filk cordounis; ane pair of broun veluet breikis, wrocht with cordounis of gold; ane lowse gown of grograne, ane skirt of broune fatene, ane broun faittene dowblet, twa hwidis with craipis; togidder with ane pair of blankettis, quhairin he band all the saidis clathis and abulzements: Quhilkis guidis and geir pertenet to the said Johnne Craufurd of Kilbirnie and his spous. LYKE as, att the samyn tyme, he with his complices, brak vp the said Johnne Craufurd's Charter-kist, standing within the said Place, and thiftioullie stall, concealit, reffett and away-tuik, furth thair of, ane grit number of the said Laird of Kilbirne's speciall eidentis and writtis,¹ togidder with the saidis guidis and geir and abulzements, he and his complices had and convoyit away with thame, and disponit thairvpoun att thair pleasour; and he wes airt and pairt of the thifteous steilling, concealing, reffetting and away-taking of the saidis guidis, geir, writtis, eidentis and vtheris aboue writtin, and of the breking of the said Place, in maner, and att the tyme foirsaid; quhilk wes notourlie knawin. To the takin,² he, with his wyffe and seruand-wemene, delyuerit bak agane to the Lady Kilbirny, within the duelling house of Cuthbert Craufurd in Parkfut, in presens of the said Cuthbert Craufurd, Hew Gawin in Boig, Williame Allane in Manis, Thomas Harvie in Broklirhill, Mungo Allane in Sarlie, Hew Starrie in Bankfyde, and George Kelfo in Brighill, the perticuler abulzementis following, viz. the saidis cuttit out velvet dowblet, the broun velvet breikis, the lowse grograne gowne, the broun fatene skirt, ane broune fatene dowblet, the said figurit velvet gowne, the said broun ryding cloik and skirt, with the saidis twa huidis, quhilkis wer thifteoullie stollin and away-brocht be him and his complices, furth of the said place, att the tyme foirsaid: To the takin also, he being examinat him selff, in presens of the Minister, eldaris and deakinnis of the Kirk of Kilbirnie, he grantit and confessit the haifing of the said blew taffatie bend, with certane of the said Laird and Ladies writtis and eidentis, bot wald nocht declair how he came be thame; as the Extract of his Confessioun, heirwith producit to schaw, beris: To the takin lykwayis, the said Johnne, being charget of befoir to find cautione to haif comperit before the Justice, at ane certane day bygane, to vnderly the law for the foirsaidis crymes, he than, for dissobedience of the said charge, past to the horne; as the Hoirning lykwayis schawin beiris.

PERSEWARIS, Johnne Craufurd of Kilbirnie, Sir Thomas Hammiltoun of Monkland, kny^t, Aduocat. PRELOCUTOURIS for the pannell, Mr Johnne Ruffell, Williame Speir, wryter, Mr Patrik Hammiltoun.

The Laird of Kilbirnie takis instrumentis of the productione of Thomas Wilsoun at the horne, and lykwayis of the productione of the Letteris aganis

¹ Principal title-deeds and writings.

² In token, or proof.

the cautioneris for the Entrie of Johnne Craufurd, and of the roll of his Affise; and offeris him reddie to persew the said Johnne for the crymes contenit in his Dittay; and protestis, in respect thair of, that he be relevit of his cautionerie.

VERDICT. The Affise, be the mouth of Williame Orr in Lochrig, chancellor, for the maist pairt, fand, pronuncet and declairit the said Johnne Craufurd to be Clene, innocent and acquit of airt and pairt of the breking, &c.

Slaughter — Demembration.

Mar. 7.—NINIANE AIRMESTRANG, callit *Niniane of Tueidane*, Andro Henderfoune, servand to the Laird of Mangertoune, Archibald Airmestrang, callit *Fair Archie*.

Dilaitit of the Slauchter of vmq^{le} Andro Smyth, and demembring of Thomas Tueidie of his neise (*nose*.)

PERSEWERIS, Johnne Smyth, sone to vmq^{le} Andro Smyth, Thomas Tueidie in Dwnsyre.

The perseweris passis fra the persones in pannel, *pro loco et tempore*.—Robert Scott of Hayning become fouertie for the entrie of Niniane and Andro, and Sir James Johnnestoune of that Ilk, for the said Archibald, the thrid day of the air (of Dumfries) or soner, vpone xv dayis wairning, to vnderly the Law, &c.

Mutilation and Demembration.

Mar. 7.—GAWIN ELLOTE of Fiddeltonne, callit *Johnne's Gawin*.

Dilaitit for Dismembring of Thomas Twiedie in Dunfyre of his nise (*nose*.)

Robert Ellote younger of Fallinesche oftymes callit, as cautioner for the said Gawin, to haif enterit and presentit him befor the Justice this day, vnder the pane of thre thousand merkis; as he that become fouertie actit in presens of Sir Williame Seatoun of Kylesmure, Sir Johnne Chairteris of Amisfeld, and Sir Jedione Murray of Elibank, kny^{tis}, his Maiesteis Commiffioneris, in ane Court of Justiciarie held be thame, within the tolbutth of Peiblis, the tuentie tua day of December lastbypast. The said Robert vnlawit in the said pane.

Cattle and Horse Stealing — Slaughter — Fire-raising — Shooting of Pistolets — Cutting down Timber, &c.

Mar. 19.—HECTOR TRUMBILL of Wauchope, George Trumbill his sone, Adame Trumbill in Bullerwall, ('*past fra*,') George Trumbill in Howa, ('*past fra*,') Johnne Trumbill, sone to Hector of Wauchope, Hector Trumbill of Stanyledge, ('*past fra*,') Andro Trumbill, brother to Bullerwall, ('*past fra*,') Hector Trumbill in Clarielaw, and Thomas Trumbill of Hoppisburne.

Dilaitit, accuset and perfewit for airt and pairt of the crymes *respectiue* following, viz.

FOR the thiftious Steilling, conceilling, reffetting and away-taking, fra Margaret Trumbill Lady Apotefyde, furth of the toun and landis of Hairwood, tua hundreth ky and oxin, threttie fcoir of fcheip, threttie horfe and meiris, with the haill inficht and pleniffing, worth the fowme of ane thowfand pundis money; committit in the moneth of Junij, the yeir of God I^m.V^c. fourfcoir aughtene yeiris (1598). ITEM, for airt and pairt of the thiftious fteilling, conceilling, reffetting and away-taking furth of the landis of Apotfyde, of ane hundreth ky and oxin, tua hundreth fcheip pertening to the faid Margaret, with hir haill infycht and pleniffing being within the faid place, worth V^c lib.; committit in Junij, the yeir of God foirfaid. ITEM, for airt and pairt of the thiftious fteilling, conceilling and away-taking, be way of Maifterfull thift and ftouth-reif, furth of the faidis landis of Apotefyde, of xxx ky and oxin, pertening to the faid Margaret Trumbill, with hir haill inficht pleniffing, worth the fowme of V^c merkis; committit in Januar, the yeir of God I^m.V^c. fourfcoir nyntene yeiris. ITEM, for airt and pairt of the treffonabill and awfull Raifing of ffyre about the place of Apotfyde, and burning and diftroying of dyuerfe houffis within the faid place, togidder with tua horfis, price of the peice¹ V^c pund; with certane inficht and pleniffing; committit in the moneth of Maij, I^m.V^c. fourfcoir nyntene yeiris: And for airt and pairt of the crewall Slauchter of v^mq^{le} Williame Lorane,² ane young boy of xij yeiris of age; committit in the moneth of Julij, the yeir of God I^m.Vj^c. yeiris, within the wood of Lorane, vpon fet purpois, prouifoun, auld feid and foirthocht felony. ITEM, for airt and pairt of the crewall Slauchter of v^mq^{le} Hectour Lorane of Harwoid, with fchotis of hagbutis and piftolettis; committit in the moneth of Junij, the yeir of God I^m.Vj^c. and foure yeiris. ITEM, for airt and pairt of the Slauchter of v^mq^{le} Lyell Broun, fervand to the faid Margaret: AND als, for airt and pairt of Steilling fra the faid v^mq^{le} Lyell, furth of his landis of Harwoid, of threttie ky and oxin, threfcoir fcheip, thre horfe and twa meiris, with the haill inficht and pleniffing of his hous, worth the fowme of thre hundreth merkis; committit in the moneth of Junij, the yeir of God, I^m.V^c. fourfcoir aughtene yeiris. ITEM, for contravening of the Actis of Parliament, in beiring, weiring and fchuiting of hagbutis and piftolettis, vpon the faidis landis of Harwoid, Apotefyde and remanent places foirfaidis, fchuitting and flaying of the faidis Hectour Lorane of Harwoid, and v^mq^{le} Williame Lorane, his brother, the tymes *respectiue* aboue writtin of the committing of thair faid Slauchteris. ITEM, for contrauening the Actis of Parliament, in cutting down and diftroying, in the monethis of Januare, Februare, Marche, and remanent monethis of the yeiris of God I^m.V^c. fourfcoir aughtene, 1599, 1600, 1601, 1602, 1603, 1604 and 1605, at the leift in ane ar vther of the faid monethis and yeiris of God, of the haill grit growand trayis,³ within the woidis of Apotefyde, pertening to the faid Margaret Trumbill, viz. ane thoufand birk treyis, fyve hundreth grit aikis, thre hundreth allouris, four hundreth haifaillis;⁴ and hes waiftit and deftroyit the faidis woidis.

PERSEWERIS.

Margaret Trumbill, Lady Apotfyde; Mr Robert Lyntoun, Aduocat, fubftitute to my Lord Aduocat.

PRELOCUTOURIS for the pannell, Mr Alexander King, Mr Lawrence M^cGill.

Compeirit perfonallie WILLIAME ERLE OF ANGUS, Lord of the Regalitie of Jedburghe-fforrest, and producet his Seafing, comprehending the faid Regalitie, and defyrit to Repledge the particular perfones following, duelling within the faid Regalitie, viz. The Laird of Wauchope, George and Johnne Trumbillis, his fones, and Thomas Trumbill of Hoppifburne, as houfhold man to Thomas Trum-

¹ Price of each, £500.

² Brother to the Laird of Harwood.

³ Large growing timber.

⁴ 1000 birch trees, 500 great oaks, 300 allers (elder, or mountain ash), 400 hazels.

bill younger of Wauchope, all duelland within the said Regalitie. It is anfuerit be the Aduocat, that the perfones defyrit to be repleget can nocht be repledget for Treffone, viz. ffyre-raifing,¹ contenit in the Dittay.—It is anfuerit be Mr Alexander King, that thai aucht to be repledget, nochtwithstanding of the Advocatis allegiance; becaus (thair is) na Treffone, bot that quhilk is committit aganis the kingis awin perfone.—It is duplyit be the Aduocat, that ffyre-raifing is Treffone; and thairfore the said perfones can nocht be repledget, bot fould pafs to ane Affyse, quhither it be committit aganis his Maieftis perfone, or for ony vther cryme impoirting Treffone.

THE Justice, eftir probatioun led that the saidis perfones duelt within the Regalitie, Admittis my Lord of Angus Replegeatioun, repledeand thame for the haill crymes contenit in the Letteris, except the Treffone of ffyre-raifing: And my Lord of Angus, present, fand cautioune, viz. Adame Trumbill in Bullerwall, to adminifter Justice, in Lyntelleis, the xv day of Apryle nixt; and the said Adame become cautioune for the entrie of the saidis perfones.²

The perfewer paffis fra Hectour Trumbill of Clarielaw, for the cutting and diftroying of the greine-woid, contenit in the Dittay, *pro loco et tempore*.

Treasonable Fire-raising — Cattle-stealing — Slaughter, &c.

Mar. 19.—HECTOUR TRUMBILL of Wauchope, George Trumbill and Johnne Trumbill his fones, Hectour Trumbill of Clarielaw, and Thomas Trumbill of Hoppisburne.

Dilaitit, accuset and perfewit of the crymes *respectiue* following, viz.

THE said *Hectour Trumbill of Wauchope* and *Hectour Trumbill of Clarielaw*, of airt and pairt of the treffonabill and awfull Raifing of ffyre, vpone the landis of Harwod, and burning and diftroying of fourtie dargis of turves,³ pertening to the said Margaret Trumbill Lady Apotefyde; committit in the moneth of Junij, the yeir of God, I^m.V^c.lxxxxviiij yeiris. ITEM, the saidis *Hectour Trumbill, elder of Wauchope, George and Johnne Trumbillis* his fones, *Hectour Trumbill of Clarielaw*, and *Thomas Trumbill of Hoppisburne*, ffor airt and pairt of the treffonabill Raifing of ffyre about the Place of Apotefyde, and burning of findrie houffis of the said Place, togidder with tua horfis, worth ane thousand pundis, and haill infycht and pleniffing within the saidis houffis, worthe ane hundreth pundis; committit in the moneth of Maij, the yeir of God I^m.V^c.fourfcoir-nyntene yeiris. ITEM, the said *Hectour Trumbill of Clarielaw*, for airt and pairt of the Steilling of tua hnndreth ky and oxin, threttie fcoir of fcheip, threttie horfe and meiris, pertening to the said Margaret Trumbill Lady Apotefyde; with the haill inficht and pleniffing of hir houffis, worth the fowme of ane thousand pundis; committit in the moneth of Junij, the yeir of God I^m.V^c.fourfcoir aughtene yeiris: AND of the haill remanent crymes of Thift, Slauchteris, Cutting doune of grene growand treyis and vtheris contenit in the Act of adjudicatioun of Thomas Trumbill, of the dait of thir presentis.⁴

¹ Being one of the pleas of the Crown.

² This, evidently, is one of the instances which the Editor has before referred to of the evil effects resulting from the Heritable Jurisdictions possessed by the Barons of Scotland, before the Act, abolishing such powers, was passed. The purpose of the 'Replegiation' was undoubtedly to quash all proceedings, and suppress the administration of justice.

³ Darg usually signifies a *day's-work*. This may, therefore, signify a quantity of peats or turfs, equivalent to the labour of forty days' work, in casting, &c.

⁴ See the first Dittay.

VERDICT. The Affyse, be the mouth of Williame Ryddell in Woidhous, chancellor, all in ane voce, ffand, pronuncet and declairit the saidis Hectour Trumbill of Wauchope, &c. to be Cleane, innocent and acquit of airt and pairt of the crymes perticularlie aboue specifeit.

Theft — Slaughter — Fire-raising, &c.

Mar. 19.—**THOMAS TRUMBILL**, younger of Wauchope.

Dilaittit of airt and pairt of the thiftious Steilling, conceilling, reffetting and away-taking fra Margaret Trumbill Lady Apotefyde, &c.¹

THE Justice decernit and ordanit James Gledstanes, appeirand of Coklaw (as cautioner for his entry), to be vnlawit and amerciati in the panes contenit in the Actis of Parliament, viz. ffor nocht entrie of the said Thomas, to the effect foir-faid, in the pane of Fyve hundreth merkis money: And ficlyke, Decernit and ordanit the said Thomas Trumbill, younger of Wauchope, for his non-compeirance, to be denuncet our fouerane lordis rebell and put to his hienes horne, and all his moveabill guidis to be escheit and inbrocht to his Maiesteis vse, &c.

Slaughter.

Mar. 20.—**LAURENCE LORD OLIPHANT.**

Dilaittit of airt and pairt of the Slauchter of vmq^{le} Gilbert Gray in North Bannirrane; committit in the moneth of September last.

PERSEWERIS.

Helene Rattray, the relict, Mr Thomas Henderfoun, Aduocat-substitute to his Maiesteis Aduocat.

PRELOCUTOURIS for the pannell, Mr Williame Oliphant, Mr Alexander King.

My Lord Aduocat takis instrumentis of the productione and reding of his Maiesteis Letter, direct to the Counfall; quhair of the tennour followis.

JAMES R.

RIGHT trustie and weilbelouit counseignis and counfallouris, We greit 3ow hairtie weil. Quhairas it is heavilie complened vnto us, be Patrik Gray, of the crewall Slauchter of vmq^{le} Gilbert Gray his faper, by certane persones speciallie houndit out be pe Lord Oliphant, and sum of pame being his domestik feruitouris; quhich offence doith so muche pe moir greve us, that now, quhair as in the lait Bordouris and in pe verrie Hielandis of pat our realme, pair is such vniuerfall obedience, that nocht-peles in pe verrie hairt of pat cuntrey, and so neir to pe ordiner place of residence of our Justice pair, such ane vyld fact fould be committed, without pwneishment inflicted vpone the doaris pairof; and pat to delude our Justice, any of our nobilitie pair, absenting him self from pe action, fould hound out vperis to execute his privat revenge, and be his craftie conveyance of pe malefactouris out of pe way, fould tak away all meanis of pe tryell of his awin giltines in that cryme; quhich doing, inferring so dangerus ane preparatiue² as that nane of our subiectis, gif pis be nocht prevented, can be in suretie of his life. We ar pairfoir to recommend to 3our special care and dilligence, as 3e respect our pleasour and seruice, that na menis be vnassayed by 3ow, to bring pe treuth of pis matter to light; ffor as We ar most grevoullie offendit with pe cryme committed, so if pe doaris be nocht apprehendit, pe matter

¹ See the first Dittay.

² Example, precedent.

halylie tryit, and justice ministrat accoirding pairto, it will so much pe moir discontent us. And so We bid 3ow fairweill. FROM our Court at Quhytehall, the eght of Januare, 1606.

Eftir the reiding of the quhilk Letter, my Lord Aduocat defyret, that, accoirding to the faid Letter, this matter fould be tryit, and my Lord Oliphant committit, quhill¹ the perfones contenit in the Letteris be exhibeit and presentit to justice.

The quhilk day, Lawrence Lord Oliphant, being enterit vpone pannell, be him selff, with Mr Williame Oliphant and Mr Alexander King, aduocattis, his prelocutouris, exponet and declairit,² fforfamekill as he, being charget, be vertew of our fouerane lordis Letteris, purchest at the instance of Patrik Gray, in North Bandirrane, eldest sone, Gilbert and Johnne Grayis, also sones, with the remanent kyn and freindis of vmq^{le} Gilbert Gray, in North Bandirrane, and Sir Thomas Hammiltoune of Monkland, knycht, aduocat to our fouerane lord, for his hienes entreis, to find cautioun, actit in the buikis of Adiornall, that he fould compeir befor the Justice and his deputis this day, and place, in the hour of cause, to vnderly the law, ffor airt and pairt of the felloun and crewall Slauchter of the faid vmq^{le} Gilbert Gray, allegit done and committit be the faid Laurence Lord Oliphant, vpone the . . . day of September lastbypast, vpon the landis of North Bandirrane; at the leift, the samyn being done of the speciall caufing, fending, hounding out, devyseing, airt, pairt-taking, directioun, counfalling, refsetting with the bludie hand, command, assistance and ratihabitoun of the faid Laurence Lord Oliphant, as the Letteris beiris. For obedience of the quhilk charge, he than fand Williame Moncreif of that Ilk fouertie for his entrie, this day and place, to the effect foirfaid; ffor quhais releif and tryell of his innocencie in the faid matter, he compeirit, and offerit him self reddie to abyde the tryell of the law for the faidis allegit crymes, quhairof he was maist innocent; disaffenting to all continuatioun. And in respect that the faidis Patrik, Gilbert and Johnne Grayis, perseweris specifeit in the faidis Letteris, being oft tymes callit, compeirit nocht to infist in his lordschipis persute, for the crymes aboue specifeit, protestit for releif of the faid Williame Moncreif of that Ilk, his cautioner, of his cautionerie foirfaid; and that he be nocht callit nor persewit at the instance of ony pairtie, for the faidis crymes, in tyme cuming.

THE Justice continewis this matter to the thrid day of the nixt Justice-air of the sherefdom of Forfar, or soner, vpone xv dayis wairning: And ordanis my Lord Oliphant to find cautioun for his compeirance, to the effect and in maner foirfaid; quha fand Sir George Toures of Innerleyth, knycht, fouertie for his entrie, vnder the panis contenit in the Actis of Parliament.

¹ Until. ² It is thus expressed in a sentence immediately preceding, 'My Lord Oliphant offeris him self reddie to abyde the tryell of the Law, disaffenting to all continuatioun; and seing thair is ane sufficient number of noble men in this burgh to pas vpone his Assyse, desyres he may be put to the Tryell of ane Assyse, instantlie, for the crymes lybellit.'

Slaughter — Bearing and Shooting of Hagbuts, &c.

Mar. 22.—GILBERT GRAY of Bandirrane, Patrick Gray, his sone, and Williame Broun in Hagishall.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Johnne Maister of Oliphant and of James Reid, sone to David Reid of Thridpairt, &c.

Compeirit Hew Reid, and produceit our fouerane lordis Lettres, deulie execute and indorsat, and askit instruments of the production thair of; and protestit for his cautioneris releif, and offerit him selff reddie, with the assistance of the Kingis Maiesteis aduocat, to persue Patrik Gray and Williame Broune for the slauchter of vmq^{le} James Reid, his brother. Compeirit Mr Johnne Russell and Mr Thomas Hoip, aduocattis, and presentit the Kingis Maiesteis Letter, quhair of the tennour followis.

JAMES R.

JUSTICE, Justice Clerk and your deputtis, We greit you weill. Forfamekill as it is vnderstand to us, that our vtheris Letteris ar direct at the instance of pe kyn and freindis of vmq^{le} James Reid, sone to David Reid of Thrid-pairt, and our Aduocat for our intreis, ffor calling of Gilbert Gray, &c. to vnderly our lawis befor you, for airt and pairt of pe Slauchter of pe said vmq^{le} James, as our saidis Lettres beiris: As lykwayis, for Convocation of our leigis in airmes, and beiring, weiring and schuiting of hagbuttis and pistolettis, aganis pe tennour of our Actis of Parliament and Proclamations, maid and direct, expresse prohibeiting pe same: Nochtwithstanding, being informet pat pe said Slauchter was committit, and pe saidis forbidden wapones borne and vsed in the execution of our Commiffioun, direct for searhing and apprehension of Gilbert Gray, sumtyme seruant to Gilbert Gray of Mekill Bandirrane, our denounced rebell, for pe crewall Slauchter of vmq^{le} Johnne Shiphird, for findrie crymes of Thift and vperis odious crymes committit be him: And that vmq^{le} Johnne Maister of Oliphant, and pe said vmq^{le} James Reid, in not withstanding of our saidis Commiffioneris, and assisting and plane partaking with pe said Gilbert our rebell, wer baith slane: ffor quhilk beiring, weiring and schuiting with pe saidis hagbuttis and pistolettis, our said Commiffioun, conteneing a speciall Remiffioun to our saidis Commiffioneris, and all vtheris our subiectis assisting pame, in execution pair of: And considering pairwith, pat pe execution of pis our Commiffioun, in pat soirt, may terrifie pe lyk malefactoris to continew¹ in thair wicked deidis, contempt and rebelloun. It is pairfoir our Will, and We command you, that vpone pe sicht heirof, ye stay all maner of proceeding against pe saidis Gilbert Gray of Bandirrane, Patrik Gray his sone, and Williame Broun, for pe said Slauchter of pe said vmq^{le} Maister of Oliphant and James Reid, the beiring, weiring and schuiting with pe saidis hagbuttis and pistolettis, or ony vtheris crymes expresse in our saidis Letteris, alreddie raisit, or to be raisit aganis pame for pe same, in tyme cuming, sua pat pai may inioy pe benefeit of our Remiffioun, expresse in our Commiffioun foirsaid: As ye will ansuer to vpone your office and obedience; Quhairanent pis present fall be your sufficient Warrant. Gevin at our Court, in Quhytehall, pe penult day of Maij, 1604.

Mr Robert Lyntoun, Aduocat, substitute to my Lord Aduocat, allegis *ante omnia*, the persones persewit aucht to be enterit on pannel; and thairfoir, in respect of thair nocht entry, desyres of the Justice that thair cautioner may be vnlawit, and thai, for thair nocht compeirance, adiuget to be denuncet rebell and put to the horne; and that in ane Criminall persute, accoirding to the daylie

¹ From continuing.

practik, the defenderis, befoir ony proces, fould be first enterit. The said Mr Johnne Russell allegit in the contrair, in respect of his Maiesteis Warrant; and forder, that his Maiestie, be his auctoritie, may ather command the Justice to hald Court or to continew the dyet, at his Maiesteis plesour.

THE Justice, in respect of his Maiesteis Letter, producet, continewis this matter to the thrid day of the air,¹ or soner, vpone xv dayis wairning, in the samyn estait as it was of befoir, aganis Patrik Gray and Williame Broune: And ordanis Johnne Lyndesay of Evlik, cautioner, in respect of thair nocht entrie this day and place, to remane still cautioner, conforme to the Act of Adiornall maid thair-upoun of befoir. Quhairupoun the saidis personeris and the said Mr Johnne Russell askit instrumentis.

Cattle and Horse-stealing.

Jun. 13.—ROBERT BEIROPE of that Ilk.

Dilaitit of airt and pairt of the Steilling of certane ky and oxin, pertening to Sir Johnne Ker of Hirfell, viz. fforfamekill as he, accompaneit with Robert Selbie of Bittilfdane, Loukie Daudsfoun and diuers vtheris, his complices, common and notorious thewis, broken men, in the moneth of November 1596 yeiris, cam to the said Sir Johnnis place of Lytildane, and thair, vnder fylence and cloud of nycht, brak vp the byre-duris of the said place, and thifteoullie stall, concelit, resset and away-tuik furth thair of faxtene ky and oxin, with fax horse and meiris, &c.

PERSEWER, Sir Johnne Ker of Hirfell.

PRELOCUTORIS for the pannell, The Lairdis of Pharniherst, elder and y^r, Mr Johnne Russell.

VERDICT. Found by the Assyse² to be 'Clene, innocent and acquit.'

Slaughter.

Jun. 18.—JOHNNE M^cDOWELL of Freuchie; Johnne M^cdowell, his servand; Eufame Dunbar, Lady Garthland; Alexander M^cdowell of Barjarg; Alexander Neilsfoun, fear of Craigcaffie;³ Patrik M^cdowell of Creoches; Williame Bigholme in Galderioch; Gilchryft M^cmaister, thair; Vthreid M^ckie in Innermessene;⁴ and Nicol M^cgowne in Trottincoroche.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Quintene Boyd; committit in the moneth of Apryle lastbypast.

¹ Of Perth. ² Chiefly feuars. The chancellor was Johnne Mow of that Ilk. Johnne Halyburtoun of Mertoun, James Ker of Steilstokbrayis, Johnne Robsfoun of Burvanes, and Patrik Diksfoun of Belchefters, are the only persons of note who appear on the Inquest.

³ 'Past fra simpliciter.'

⁴ 'Past fra simpliciter.'

PERSEWER, Adame Boyd, as brother.

The perfounes enterit on pannell askis instrumentis of thair entrie, and protestis for releif of the Laird of Mondurk, thair cautioner: And in respect of thair innocencie of the crymes lybellit, offeris thame selffis to the tryell of the law thairfoir, and disassentis to all continuatioune.—The perfewer passis fra the Lady Garthland *simpliciter*, in respect of hir innocencie.

THE Justice Ordanis the remanent Defenderis to find caution to the thrid day of the air, or soner, vpone xv dayis wairning.

QUESTION *of the Pannels being entitled to their expenses.*

It is allegit be the perfones on pannell, that in matters Ciuill, protestatioun being admittit in fauouris of the defender aganis the perfewer, the Lordis are in daylie vse to modifie the parteis expenffis; *multo magis*, in matteris Criminall, a partie being perfewit and compeirand, offerand him selff to abyde the tryell of the law, for the cryme quhairof thay ar indyttit, thair expenffis aucht to be modifeit, and the perfeweris decernit to pay the samyn.

THE Justice declairis to this perfewer, gif he raise Letteris of new agane, contrair thir defenderis, vpoune the crymes foirfaidis, gif thay fall happin to be clanget, he fall be adiudget to pay the defenderis expenffis, bayth for this dyet and the dyet following: And ordanis the Clerk to tak cautione of him at the raising of the Letteris to the effect ffoirfaid: Quhairvpoun the perfones on pannell askit instrumentis.

The 'Affysouris' also protested, that 'thai be nocht summond heirefter, for this cause.'

Oppression — Taking Captive — Murder.

Jun. 20.—THOMAS CALDER in Clwnes, Johnne Oir in Calder, and

Walter M^crobie Roise in Mekil Geddes.

Dilaitit of airt and pairt of the Taking and Apprehending of vmq^{le} Dauid Dumbar of Lochileis captiue and presoner; and convoying him captiue to Ergyll, and detening him in captiuitie, be the space of tuell oukkis.¹ And for airt and pairt of the Slauchter and Murthour of vmq^{le} Williame Lyoun and vmq^{le} Alexander Dauidfoun, seruandis to the said vmq^{le} Dauid; committit in the moneth of October, the yeir of God I^m.V^c.lxxviij yeiris, within the toune of Aulderne.

PERSEWARIS, Alexander Dumbar of Lochieleis, (as sone,) Johnne Lyoun, as sone to vmq^{le} Williame Lyoun, Andro Dauidfoun, as brother to vmq^{le} Alexander.

PRELOCUTOURIS for the pannell, Mr Thomas Henderfoun, aduocat, Mr Henrie Kynroife.

The faidis Thomas, &c. tuik thame to our fouerane lordis Remiffioun, producit, vnder the Greit Seill, of the dait, at Halyruidhous, the thryd day of Apryll,

¹ Weeks.

the yeir of God, I^m.V^c.lxxx and nyne yeiris ; Quhilk Remiffioun, the Juftice admittit, and Johnne Campbell of Calder, with thame felffis, become cautioneris and fouerteis, coniunctlie and feuerallie, to fatisfie the pairtie, as law will.

[CURIA JUSTICIARIE *f. d. n. Regis, tenta in Aula Inferiori de Ormestoun-hall, per M. Willielmum Hairt, Justiciarum Deputatum.*]

Murder of a Pregnant Woman — Child-murder.

Nov. 10.—PATRIK DEANIS, in Gilcherftoune.

Dilaitit of the crewall and vnnaturall Murthour and Slauchter of vmq^{le} Katharene Butler his fpous, and of ane infant bairne in hir wamb ; be ftreking hir with his feit vpon the wamb, and with ane fwyngill-trie,¹ on the bak and fchoulderis, and dyuerfe vtheris pairtis of hir body, fcho being with quik bairne for the tyme ; be occafoun quhairof, fcho immediatlie thaireftir, with the faid bairne in hir wamb, depairtit this lyfe : Committit the fevint of Nouember instant, at his awin hous-dur in Gilcherftoune, betuix aucht and nyne houris at evin, &c. ; conforme to his awin Confessioun.

VERDICT. The Affife, be the mouth of Johnne Harlaw in Laiftoune, chancellor, ffand, pronuncet and declairit the faid Patrik, conforme to his awin Confessioun, maid judiciallie in thair prefens, to be ffylet, culpabill and convict of the faid crewall and detaiftable Murthour.

SENTENCE. And thairfoir the faid Juftice-depute, be the mouth of Johnne Hammiltoun, dempfter of Court, decernit and ordanit the faid Patrik to be tane to the ground quhair the faid fact was committit, and thair to be hangit vpone ane gibbet, quhill he be deid ; and all his moveable guidis to be efcheit, &c.

Slaughter.

Dec. 19.—EDUARD NISBET, merchand burges of Edinburghe, and Thomas Nisbett, fone to the Laird of Nisbet.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Carmichell, fone to the Guidman of Vderine.

PERSEWERIS, Richerd Carmichell, brother, Williame Carmichell, father-brother, Marioun Carmichell, father-fifter ; and Mr Johnne Ruffell, Aduocat, Mr Robert Boyd, curators to the faid Richerd.

PRELOCUTOURIS for the pannell, Mr Alexander King, Aduocat, Sir Williame Cranftoune, Mr Thomas of Morieftoune, Mr Johnne Nisbet, James Nisbet, merchand.

Compeirit Richerd Carmichell, &c. with Mr Johnne Ruffell and Mr Robert Boyd, curatouris to the faid Richerd ; and the faid Mr Johnne, as fpous to the faid Marioun ; and producet his Maieftis Warrant to the Juftice ; quhairof the tennour followis.

¹ The wooden-beam, or 'tree,' to which the plough-traces are attached.

JAMES R.

JUSTICE, Justice Clark and your deutes, We greit you weill. Having directit to continew the perfute of Thomas and Edward Nisbettis, for the slauchter of vmq^{le} James Carmichell, quhill the information gewin vnto us of pair committing of pat fact in pair awin defence, war fyrst tryed by our Counfall; from quhom we have ressaunt ane cleir testimony of pair innocency of pat fact: And being most willing that Justice be administrat to all our lving subiectis: It is thairfore oure Will, that you affix and keip your Justice Court against the saidis personis, att sic place as salbe maist convenient; and putt same to the knowledge of ane Inqueist; so that the accusatiounes and defences of both the parteis may be weill considered of by you, before that mater be adiudged: And that, nochtwithstanding ony command or directione gewin by us or our Counfall in the contrair; as ye will answer to us vpoun your office and obedience: Quhairanent per presentis salbe your Warrant. Gewin at our Court of Roystoun, the xiiij day of October, 1606.

And siclyk, producet our fouerane lordis Letteris of Assyse and Dittay formet aganis the pannell; and tuik instrumentis of the productione thair of.—The pannell declairis, nochtwithstanding of thair innocencie of the Slauchter, they are content to enter in cowmoning, and to offer satisfactioun and assythement for the slauchter, at the sight of freindis.—The perseweris declairis, in respect that the bairne is minor quha persewis; and thairfoir, the remanent perseweris can nocht tak the burding of that mater vpone thame; and desyret proces. Thairafter Mr Alexander King, prelocutour for the pannell, producet his Maiesteis Warrant, direct to the Justice, for continuatioun of this matter to the xxviij day of Januare nixt; quhair of the tennour followis.

JAMES R.

IT is our pleassour and Will, that ye continew all actione and proces before you, at the instance of the kyn and freindis of vmq^{le} James Carmichell in Dyfert, aganis Edward and Thomas Nisbettis, for the Slauchter of the said vmq^{le} James; committit in the moneth of . . . lastbypast; and nawyise proceed and grant ony proces thairin, before the xxviij day of Januar nixtocum: ffor the quhilk your delay and continewatioun, thir presentis salbe to you sufficient Warrant. Gewin at our Court off Quhytehall, the nynt of December, 1606. To our Ry^t trustie and weilbelouit, oure Justice, Justice-clark, and pair deputis.

It is answerit be the perseweris, that the said Warrant of continuatioun aucht nawayis to be respectit be the Justice; bot nochtwithstanding thair of, the persones now on pannell aucht presentlie to be put to the knowledge of ane Assyse; for tua caussis: *ffirst*, In respect of the former Warrant producet, quhairin tua speciall poyntis are maist remarkable; ffirst, his Maiestie thairby hes declairit, that he hes ressaunt na cleir testimony of thair innocencie, be the tryell¹ tane at Leyth, befoir the Counfall; and thairfoir, accoirding to his hienes good affection to justice, of his certane knowledge and proper motiue directit the first Warrant: The nixt, is the command gevin thairin to the Justice, with this qualite,² that he sall obey the samyn, nochtwithstanding of quhatsumeir vther command thair gevin be his Maiestie or Counfall in the contrair. *Secundo*, the

¹ Examination, *precognition*.

² Qualification.

faid pretendit laft Warrant is direct expres contrair the Act of Parliament 1592, quhilk fayis, it is ftatute and ordanit, be his Maieftis speciall will and direction, that na Warrant for continuatioun of Juftice Courtis fall be admittit be the Juftice and his deputis, in tyme cuming. *Last*, nocht only is it exprefs aganis the faid Act of Parliament, bot aganis the daylie ordour and practik obferuet baith befor the Lordis of Counfall, in Ciuill cauffis, and befor the Juftice in Criminal cauffis, that Warrantis purcheft be the fute of partie, finifter information, and for ftay of Juftice, fall nevir be respectit; quhilk is alfo conforme to the cownoun law.—It is anfuerit, that the haill allegiances aucht to be repellit, in respect of the Kingis Maieftis Warrant.

THE Juftice, accoirding to his Maieftis Warrant and direction, continewis this matter to the xxviij day of Januare nixt: And ordanis the perfones on pannel to be wairdit within the Tolbuith of Edinburgh to the faid day,¹ and the Affyfe, fummond to this day, wairnit, *apud acta*, &c.

Cruel Slaughte.

Dec. 19.—JOHNE and WILLIAME RUTHERFURD, fones to Stewin Rutherford in Chatto, boirne vnder James Ker of Greneheill.

Dilatit, accufet and perfewit be DITTAY,

FORSAMEKILL as, thay haifing confaut ane deidlie feid, rancour and malice aganis vmq^{le} Thomas Bell in Spiddope-fute, in England, becaufe he had hurt and lameit the faid Williame, vnderftanding the faid vmq^{le} Thomas to haif bene in his fomer-fcheill befyde the fellis,² in the moneth of Junij, or thairby, laftbypaft, thay, vpoun cullour and in a counterfute forme, feingeing thame felffis to be in feiking of ane kow that was tynt³ amangis the fcheillis, come to the faid vmq^{le} Thomas Bell, in an howp⁴ callit Spittope-howp, quhair he wes, in fober and quyet maner for the tyme, with his wyfe and ane young lafs, milking thair ky; and thair, the faid William Rutherford, haifing ane grit grene kent and fquarit batoun⁵ in his hand, eftir fum wordis paf betuix the faid Williame and the faid vmq^{le} Thomas, he crewallie invadit him for his Slaughte, and gaif the faid vmq^{le} Thomas ane crewall and deidlie ftraik in his heid, and claif the famin afunder: Off the quhilk ftraik he immediatlie thaireftir fell down deid. Lyke as, the faid Johnne Rutherford, for quhais caufe the faid deidlie feid was confaut, ftude afyde, awaiting gif his brother had bene overthrawn, or the faid vmq^{le} Thomas, to haif fortifeit and affistit him. And immediatlie eftir the famin Slaughte wes committit, thay baith mett togidder at the nik of the fell,⁶ and hering the fpraich⁷ ryfe, and the countrey to follow thame, thay baith fled in England; quhair thay were fugitiue, quhill⁸ thair apprehenfoun for the faid Slaughte. And fa, the faid Slaughte wes committit be thame; and thay and ather of thame ar airt and pairt thairof, vpoun fett purpois, provifioun, auld feid and foirthocht felony; in hie and manifest contempt of our fouerane lordis auctoritie and lawis, &c.

¹ There is no entry on Record of further proceeding in this case; but it is likely the Nisbets compounded with the private prosecutors, and obtained Letters of Remission.

² The summer scheills or *scheillings* on the 'fells' or hills, were temporary huts, for the use of those who attended the cattle during their grazing on commons, &c. They are still kept up in many parts of Scotland. It is the practice to dismantle them at the end of the grazing season.

³ Lost.

⁴ Or *hope*, a sloping hollow between hills, a common term in the south of Scotland. *Slack* is synonymous.

⁵ A large *rung*, staff, or bludgeon, and a batoun or stick made square, (*i. e.* with angular edges,) to give a more severe and deadly blow.

⁶ Nik is a narrow cleft or opening, at the summit of two hills.

⁷ Hue and cry. By reference to the Works of Sir Walter Scott, it will be seen with what astonishing alacrity the country was 'raised,' on such occasions. The pannels showed no small address in effecting their escape.

⁸ Until.

VERDICT. Eftir accusatioun of the pannell, be Dittay, of the crymes aboue writtin, quhilk wes grantit be the faid Williame, and alluterlie¹ denyit be the faid Johnne, the Affyfe, be the mouth of Murray of Brochtoun, chancellor, fand and pronuncet the faid *Johnne* to be Cleane, innocent and acquit of airt and pairt of the Slauchter of the faid vmq^{le} Thomas Bell, and of the haill heidis of the Dittay aboue writtin: And alse, ffand, pronuncet and declairit the faid *Williame* to be ffylit, culpabill and convict of airt and pairt of the faid Slauchter.

SENTENCE. For the quhilk cause, the faid Justice-depute decernit and ordanit the faid *Williame Rutherford* to be tane to the Castellhill of Ed^r, and thair, his heid to be strikkin from his body; and all his movable guidis to be escheit, &c.

Breaking into the Place of Torwoodlee — Taking Captive — Murder — Stouthrief, &c.

Jan. 8, 1607.—JOHNNE ELLOTT of Cappschaw.

Dilaitit, accuset and perfewit be George Hoppringill of Torwoidlie, James and David Hoppringillis, as ovis,² with the remanent kyn and freindis of vmq^{le} George Hoppringill of Torwoidlie, thair guidschir,³ of the crymes following, viz.

FORSAMEKILL as the faid Johnne Ellote of Copschaw, Robert Ellote, callit *Mairtenis Hob*, and Jok Airmestrang, callit *the Lairdis Jok*,⁴ with thair complices, with convocation of the haill Clannis of the Airmestrangis, Ellotes, Batiefones, Grahames and remanent Clannis, duelland alsweill on the Inglis as Scottis Bordouris, all cowmone thevis, outlawis and brokin men, to the number of thre hundredth perfones or thairby, bodin in feir of weir, with jakis, speiris, steil-bonnetis, lance-stalffis, hagbutis and pistoletis, expresse prohibeit to be borne, worne, vsed or schot with, be dyuerse our Actis of Parliament and Secreit Counfall, in the moneth of December, the yeir of God Im.Vc. threscoir aucht yeiris, (1568,) come fordward, in hosteill maner, baith on horse and fute, to the Place of Torwoidlie, and thair, vnder silence and clud of nycht, with foir-hammeris and geistis,⁵ dang up the zeittis⁶ of the faid Place, and be force and violence enterit within the samyn; and tuik the faid vmq^{le} George [Hoppringill] furth of his bed, and convoyit him away, as captiue and priffoner with thame, to the Skaldeneise, within the Sheref dome of Selkirk; and thair maist crewallie and vnmerciefullie Mordreift and slew the faid vmq^{le} George: Committing thairthrow, nocht only crewall and abhominabill Murthour and Slauchter, bot also Vfurpatioun of our fouerane lordis auctoritie vpone thame, in taking of the faid vmq^{le} George Hoppringill captiue, but⁷ power or commiffioun, he being our fouerane lordis frie lege. AND siclyke, at the samyn tyme, the faid Johnne Elliott and remanent perfones, with thair complices, to the number aboue writtin, at the tyme foirfaid, brak up the haill kiftis, cofferis and lokfast houffis within the faid Place, and thiftiouffie ftaw, conceillit, reffet and away-tuik with thame, furth of the faid Place of Torwoidlie, and stabillis thairof, sevintene horfis pertening to the faid vmq^{le} George, price of the piece ourheid⁸ ane hundredth pundis money; togidder with the sowme of ane thousand pundis of gold and money furth of the faid vmq^{le} George Hoppringillis purse. ITEM, thre siluer peices,⁹ wey-

¹ Altogether, wholly. ² Grandchildren. ³ Grandfather. ⁴ A personage well known to the public, from various anecdotes contained in the *Border Minstrelsy*, and the graphic story contributed by Sir Walter Scott, in that exquisitely beautiful Annual, 'THE KEEPSAKE,' for 1829; to which publication (pp. 186-192) the Editor refers for interesting Notices of this Border worthy, his family and associates. ⁵ Forehammers, and joists or beams. ⁶ Broke up the gates. ⁷ Without power. ⁸ Overhead, on an average. ⁹ The nature of these massive pieces of plate is not elsewhere specified. They convey a favourable idea of the wealth and splendour in which many of the Border Chieftains lived.

and fourfcoir vnces of filuer or thairby, price of the vnce fourtie schillingis. ITEM, tua duffane of filuer spvnes, ilk spwne weyand tua vnce of filuer, price of the vnce fourtie schilling: Togidder with the haill bedding, naiprie, clething, abuilgementis, inficht and pleniffing being within the said place, worth the fowme of fyve thousand merkis money of this realme, had and transpourtit away with thame, and disponit thairvpoun att thair pleafour.

THE Justice decernit and ordanit Williame Elliot of Fallinafch, cautioner and fouertie for the entrie of the said Johnne Elliot of Capschaw, to be amerciati and vnlawit for his non-entrie, in the payne of fyve hundreth merkis: And als, adiudget the said Johnne to be denunceit our fouerane lordis rebell, and putt to the horne; and all his movabill guidis to be efcheit and inbrocht to our fouerane lordis vse, as fugitiue fra his hienes lawis, for the saidis crymes.¹

Justice-Depute appointed.

Jan. 20.—THE quhilk day Mr ROBERT COKBURNE, Aduocat, was creat JUSTICE-DEPUTE; and gaif his ayth *de fidei administratione*, during his office.

[*Mr Robert Cokburne, Justice-Depute.*]

Liability Anent the General Band.

Jan. 21.—SIR JAMES JOHNESTOUNE of Dunskeillie, kny^t (of that Ilk).

Compeirit the Laird of Johnnestoune, and producet the Warrant vnderwrittin, superscruit be his Maiestie; quhairof the tennour followis.

JAMES R.

JUSTICE, Justice Clark and your deputis, We greit 3ow weill. Forfamekill as it is knawin to ws, that thair ar diuerse Criminall perfuitis movit at pe instance of findrie perfounes aganis Sir James Johnnestoune of Dunskeillie, kny^t, his kyn, freindis, pairt-takeris, men, tennentis, seruandis, and sic vperis, for quhom the (said) Sir James is anfuerable, be pe Generall Band and law of our realme; and that, for diuerse crymes alledgeit committit be pame, befor pe moneth of Apryll, 1606, thre 3eiris, quhilk wes pe tyme of owre repair hither: Albeit it be naper our will nor mynd, that the regour of pe lawis be prosecutit aganis thais perfounes for ony crymes or offences committit be thame before pe foirsaid tyme; hoping that our lenitie fall move pame to keip our peax, and be pe moir obedient subiects in tyme cuming: IT IS pairfore our Will, and We command 3ow, that pe on nawyis gif proces in any of pe saidis Criminall perfuitis alreddie movet aganis the said Sir James, his kyn, freindis, pairt-takeris, men, tennentis, seruandis, and sic vperis for quhom he is anfuerable, be pe Generall Band and lawis of our realme; nor that 3e on nawyis direct any Criminall Letteris, for perfuit of pe saidis perfounes, or any of pame, in tyme cuming, for any cryme or offence allegeit committit be pame or any of pame, preceding pe moneth and tyme aboue specifeit; nor nawyse gif proces pairvpoun heireftir: Dischargeing 3ow pairof, and of all haulding of Courtis to pat effect, and of 3our office in pat pairt: Dispensand alswa with pe saidis perfounes and everie ane of pame, anent pair non-comperance att quhatfumewir dyettis. As 3e will anfuer to ws pairvpoun: Quhairanent thir presentis salbe 3our sufficient Warrant. Gewin at our Court of Quhytehall, the saxt day of Apryll, 1606 3eiris.

THE JUSTICE Depute continewis the admitting of this Warrant to the fourt day of Februar nixtocum: And ordanit the perfoune that ffind caution for

¹ The denunciation and letters are recorded, at full length, on Jan. 9.

their entrie to this day, to find new caution for thair entrie to the said fourt day of Februar nixtocum.

The samin day Sir James Johnnestoune (of Dunskellie, kn^t.) becom pledge and fouirtie for Johnne Grahame in Dryffe, Mungo Johnnstoun in Lokarbie, &c.

(Feb. 4.)—Sir JAMES JOHNNESTOUN of Dunskellie, kny^t, is ‘americiat for nocht entrie of the saidis fyve perfounis, for ilk ane of thame in the payne of ane hundreth merkis.’ He is also americiated in 1100 merks, for the non entry of Johnne Johnnestoun in Howgill, and ten others.¹

THE Justice adjudgeit the principall persones nocht comperand to be denunceit our fouerane lordis rebellis, and all thair movabill guidis to be escheit.²

Cutting Growing Timber.

Jan. 28.—GEORGE HENDERSOUN in Wynningtoun.

Dilatit, accusit and perfewit be Robert Ellote of Reidheuche, of the crymes following, that is to say,

THAT quhair, it is expresse provydit, statute and ordanit be our fouerane lordis Actis of Parliament, speciallie, be ane Act of the ellevint Parliament, cap. lxxxij, that quhatsumewir perfoun or perfounis wilfullie cuttis doune and destroyis growand treis and coirnis, salbe callit and perfewit thairfore, before the Justice or his deputis, at Justice-airis, or perticuler dyettis; and being convict thairfor, to be pwneissit as thewis to the death; as the said Act at mair lenth beris. And trew it is, that the said George Henderfoun, with his complices, expres contrair the tennour of the Act of Parliament, in the monethis of Junij, Julij, August, September and October *respectiue*, at the leift, in ane or vther of the saidis monethis, in the yeir of God I^m.Vj^e. and fyve yeiris; and siclyke, att the ffeift of Martimes last-bypast, come to the said Robert Ellottis wod, callit Birkwod, and thair, wilfullie, by³ the said Robertis knowlege or consent, cuttit doune and distroyit, at ilk tyme, the perticuler number and quantitie of growand treis following, to witt, ane hundreth grit growand birk treyis, thre hundreth grit growand allouris, thrie hundreth grit growand heiffillis, with foure hundreth grit growand fauch treis;⁴ quhilkis growand treis, the said George and his complices had and transpoirtit away with thame, and disponit thairvpounne att thair pleafour; and the said George is airt and pairt thairfor.

PERSEWER, Robert Ellote of Reidheuche.

PRELOCUTORIS for the pannell, Mr Thomas Henderfoune, Mr Johnne Dempster.

It is allegit be the pannell, that this matter can nocht be put to the knowlege of ane Inqueist, becaus the persewer schawis na sufficient entreis to persew, nather is this persute raifit at the Kingis Aduocatis instance.—Ansuerit be the persewar, that he referris the notorietie of his entreis to persew for the cuting of the treyis lybellit, to the defenderis ayth; in respect that he knawis him to be sufficientlie infest in the woid lybellit; and as to the secund pairt, anent the Aduocattis compeirance, ansuerit, he may persew without the Aduocatis compeirance. It is allegit be the pannell, that he can nocht be vrget, vpounne the

¹ (On margin) ‘Nota, ordanit to be gewin out be pe Counfall.’
to be given out.

³ Without, contrary to.

² Nota, ‘this nocht ordanit to be given out.’
⁴ Birch, *allar* (alder or elder), hazel, and willow trees.

perfewaris exceptioun, to geve his ayth; feing the famyn will tend to the hazzaird of his life.—The perfewer in the contrair.

It is allegit forder be the pannell, that this matter can nocht be Cryminallie tryet, without a Ciuill precognitioun, before the ordinar Judge; becaus the famin is a maisterfull depridatioun.—It is anfuerit, that the perfewer repeitis the Act of Parliament, quhairupoun the fummond is foundit.—It is anfuerit be the pannell, that the Act of Parliament of the 1587, concernis the puneifchment allanerlie; and nawyis invertis nor derogatis the Act of Parliament made be King James fyft, Parlamento quarto; and speciallie, feing of the daylie practik, ffalfetis man be firft Ciuillie tryet, befor it cummis to ane Criminal Judge; Wilfull error in Affyse in Reductioun of Retouris man be firft Ciuillie tryit, befor it tak effect befor the Criminal Judge.—The perfewer, as of befor, repeitis the Act of Parliament.

THE Justice continewis this matter, and Interlocutour vpoun the allegeances foirfaidis, to the fourt of Februar nixt. The pairties and Affyse wairnit *apud acta*.

[*Mr Williame Hairt, Justice-Depute.*]

(Feb. 4.)—THE Justice, nochtwithstanding of the allegeances maid be the pannell, the last dyet, Ordanis this matter to pas to ane Affyse.

VERDICT. The Affyse, be the mouth of Johnne Gledftanes of Winningtounlaw, chancellor, fand, pronunceit and declarit the said George Henderfoune to be Cleane, innocent, acquit, &c.

[*Mr Robert Cokburne, Justice-Depute.*]

Slaughter.

Feb. 14.—JOHNNE BEK in Lytill Kirkbryde.

Dilatit of airt and pairt of the Slauchter of vmq^{le} James M^cCulloch of Barholme.

PERSEWER, Thomas M^cCulloch in Barholme.

The said Thomas tuke him to ane Remiffioun vnder the Grit feill, of the dait the xxj day of Februar, 1606; and ficlyke, produceit ane Letter of Slaynes, subfcryuit be Elizabeth Kirkpatrik, relict of vmq^{le} James M^cCulloch of Barholme, Henrie M^cCulloch hir spous, and Thomas M^cCulloch now of Barholme, and Johnne M^cCulloch burges of Kirkcubreycht, off the dait at Edinburgh, and the xvij and . . . dayes of Februar, 1607 yeiris.

[*Mr Williame Hairt, Justice-Depute.*]

Witchcraft — Sorcery — Incantation, &c.

Mar. 10.—ISSOBEL GREIRSOUNE, spous to Johnne Bull, warkman in the Pannis.¹

¹ Prestonpans. Of all the Trials for Witchcraft, &c. hitherto published from the Record, this is perhaps the most absurd and *outré*; and the circumstantial detail is perhaps *unique*. It is of course

Indytit, accusit and persewit of the crymes vnderwritten, viz. **FORSAME-KILL** as scho, haifing confaut ane crewall haitrent and malice aganis Adam Clark in Prestounpannis, scho has continewallie, this haill yeir and ane half bygane, vfit all develisch and vngodlie meanis to be avangeit vpoun him ; speciallie, in the moneth of Nouember, the yeir of God I^m.Vj^c. and sax yeiris, betuix xj and xij houris at ewin, the said Adam being lyand in his bed with his wyffe, and his seruand woman being in ane vther bed ; att the quhilk tyme, scho, in the liknes of hir awin catt, accompaneit with ane gritt number of vther cattis, in ane develisch maner, enterit within hir hous, quhair thay maid ane grit and feirfull noyse and trubill ; quhairby the said Adam, than lying in his bed with his wyffe, and seruandis that wer than in the hous, apprehendit sic ane grit feir, that thay wer liklie to gang mad : At the quhilk tyme, the Devill, in liknes of ane blak man, apperit in the hous, eftir ane feirfull maner, com to the seruand woman, than standing in the flure, and drew hir vp and down the hous be the hair, eftir he had cassin hir cursch² aff hir heid, and cassin the samyn in the fyre : Quhairvpoun the pure woman contractit sic ane grit seiknes, that scho lay bedfast, in grit danger of hir lyffe, be the space of sax oulkis³ thairefter ; and as yit hes nocht retournet to hir perfyte health ; quhilk is notourlie⁴ knawin.—**ITEM**, scho wes accusit, fforfamekill as scho, haifing confaut ane deidlie feid, rancour and ewill will, aganis vmq^{le} Williame Burnet in Prestoun-pannis, spous to Margaret Myller, wedow, scho dewyfit be all devillisch and vngodlie meanis to bereif him of his naturall lyffe ; and for performance thair of, sche, as ane manifest Sorcerer and Wich, in the moneth of Januar, I^m.Vj^c. yeiris, laid on ane feirfull and vncouth seiknes on him, be casting in of ane tailzie⁵ of raw inchantit flesch att his dur : And thaireftir, the Dewill, in liknes of ane naikit infant bairne, nichtlie, for the space of half ane yeir, appeirit in his hous ; quha appeirit befor the ffyre, haifing ane inchantit pictour in his hand : And thaireftir, the Dewill appeirit, in hir liknes, within the said vmq^{le} Williamis hous, before the ffyre thair of, and in diuers vtheris pairtis within the said hous ; quhair, in ane maist vn-honest and filthie maner, scho pischit vpoun the said Margaret Myller, and in diuerse pairtis of the said hous ; that in end,⁶ the said vmq^{le} Williame, haifing namit the said Issobell, be hir name, scho immediatlie thaireftir vaneischit away : Eftir the quhilk tyme, the said vmq^{le} Williame Burnet continewallie dwynit and pynit away, in the said vnknawin seikness, for the space of thre yeiris, nocht habill to obtene ordinar cuir ; and at last, in the moneth of September, or thairby, I^m.Vj^c. and ffyve yeiris, he, in grit dolour and payne, departit this lyffe : And

given *literally* from the Books of Adjournal. The reader is left to draw his own inference as to the death (murder ?) of the luckless mate of *John Bull*.

Fr. *courche*.

³ Six weeks.

⁴ Notoriously.

² Curtch, a kind of head-gear, or cap.

⁵ *Taille*, Fr. A piece, 'gobbet,' or cut.

⁶ At last.

fa, wes maift dewelifchlie bewichit be hir, in maner forfaid ; and fcho is airt and pairt of the faid vmq^{le} Williamis death and feiknes.—ITEM, accufit for cafting of ane greit feiknes, be hir develifch meanis, vpoun Robert Peddan, in the Pannis ; and that in the moneth of October, I^m.V^c.lxxxxiij yeiris ; quha, haifing remanit feik be the fpace of ane yeir and aughtene oulkis, fwerving and vaneifching away ;¹ and vſing all ordiner meanis to recover his health, bot daylie growing war,² att laſt he callit himſelf to remembrance, that he wes addettit to the faid Iſſobell in nyne ſchillingis and iiij d. ; and that, befoir the taking of the faid feiknes, becaus he refuſit to pay hir the faid ſoume, vnto the tyme ſcho delyuerit to him certane plaittis that ſcho kepit of his ; ſcho then, eftir vtering of diuerſe blaſphemous ſpeichis to the faid Williame, faid, he ‘ ſould repent itt ! ’ And ‘ ſould nocht haif bayth his health and haill clathis togidder ! ’ Quhairvpoun, he than come to hir, and ſatisfeit hir the faid ſoume, and thryſe aſkit his health att hir, for Godis ſaik ; ſaying, ‘ Gif 3e haif done me ony wrang or hurt, repair 3e ſamin and reſtoir me to my health ! ’ And thaireftir, the faid Robert Peddane, within, xxiiij houris, recoverit his health.—ITEM, ſcho wes accufit, that in the moneth of Junij laſtbypaſt, or thairby, ſcho, haifing wantit hir katt, be the ſpace of half ane yeir befoir, in hir bycumming the faid Robert Peddanes window, ſcho patt in hir hand and drew furth hir catt ; at the quhilk tyme, thar wes working in the fattis³ ane brewing of guid new aill, quhairof findrie honeſt neychtbouris wes than drinkand ; bot be hir develifch Incantatioun and Sorcerie, fra that tyme furth, the faid brewing of aill turnit,⁴ in ſic ſoirt, that it becam altogidder rottin and blak, thik lyk gutter-dirt, with ane filthie and peſtilent odour, that na man mycht drink nor feel the ſmell thairof.—ITEM, being indytit and accufit, fforſamekill as ſcho, haifing conſauit ane deidlie ewill will, haitrent and malice aganis Margaret Donaldſoune, ſpous to the faid Robert Peddane, about Hallowevin, in the yeir of God I^m.Vj^c. and fyve yeiris, ſcho, in hir devillifch maner, come vnder ſcilence and cloude of nycht to the faid Robert Peddanes houſe, and enterit efter ane devillifch and vnknawin way within the faid houſe, the faid Margaret Donaldſoune being than lying in hir bed with hir faid huſband, found ſleeping ; at the quhilk tyme, ſcho drew the faid Margaret be the ſpald⁵ out of her bed fra her huſband, and violentlie ruſchit hir to the fluir ; be occaſioun quhairof, the faid Margaret hir ſpreit faillit hir, that ſcho continewit ane lang ſpace aſound ;⁶ and thaireftir, cuming to hir ſelff, ſcho fell in ane feirfull and vncouth feiknes, that anes in ilk xxiiij houris, her hed and breift was ſa vehementlie trublit, that ſcho was, for the ſpace of ane hour, mad, and knew nocht quhat ſcho did ; quhilk continewit the ſpace of fyve or

¹ Swooning and fainting away.² Worse and worse.³ Vats or tuns.⁴ Ale is ſaid tobe *turned* when it is affected by lightning, &c. ; milk, when ſoured by ſun or heat, &c. A large nail is uſually thrown into the churn, to prevent this diſaſter. By attracting the electric fluid, it is ſaid to preſerve the contents ſound.⁵ Fr. *epaule*, the ſhoulder or ſhoulder-blade.⁶ In a ſwoon.

fax dayes thairefter, in grit vehemencie : And at the fax dayes end, scho heiring hir felff to be bruiittit¹ with the said wicked and devellifch turne, scho defyrit the nyctbouris to caufe hir and the said Margret to drynk togidder ; quhilk being done, scho recoverit agane hir health, and fa continewit in perfyte health, the fpace of aucht or ten dayes : Eftir the quhilk time, scho heiring hir name to be fklanderit, and scho to be namit a Witche, quha had fkill to lay on and tak af feiknes ; scho, movit with rage and invy, of new agane, come to the said Margrattis hous, and fpak to hir mony devillifch and horribill wordis, faying to hir, ‘ The fagget of Hell lycht on thé, and Hellis culdroune may thow feith in !’² And with thais, and vther the lyk devillifch fpeicheis, scho pafte away. Eftir the quhilk tyme, the foirfaid feirful feiknes tuke the said Margaret ; quha continewit thairin ilk xxiiij houris, for the fpace of ane hour, be the fpace of nyne oulkis³ togidder, in maift feirfull maner ; vnto the tyme ane pure woman come to the said Margrettis hous-dur, to afk meit ; quha, feing the said Margret wiffeit⁴ with the said feirfull feiknes, declairit to hir, that scho was witcheit, and had the rycht champ⁵ thairof : Eftir the quhilk tyme, the feiknes ceiffit, and came nocht to hir agane, quhill the beginning of December laft, that scho, cuming thair by hir dur, with ane creill⁶ on hir bak, faid to hir, ‘ Away theiff ! I fall haif thy hairt, for bruitting of me fa falflie !’ And immediatlie thairefter, the feiknes of new agane come vpoune hir ; quhairintill scho hes bene maift havelie vexit and trubillit fenfyne, to the xxvij day of Januar laft, that scho and scho war confrontit togidder, and examinat, in prefens of my Lord Juftice, of your devillifche crymes abouewrittin.—ITEM, for ane commoune Sorcerer and ane Witche and abufer of the peple, be laying on and taking af of feiknes and difeiffes, and vfeing all devilleifch and vngodlie meanis to wyn hir leving ; and Vfer of charmes and vther devilleifch practizes.

PERSEWAR, Adam Clark, fmyth in the Pannis, Margaret Myller, relict of vmq^{le} Williame Burnet, Robert Peddane, and Margaret Robiefone, his fpous.

PRELOCUTOUR for the pannell, Robert Hammiltoune, John Bull in the Pannis.

VERDICT. The Affyfe, be the mouth of Daid Seatoun, (bailzie in Tranent,) chancellor, ffand, pronunceit and declairit the said Ifobell Grierfoune to be ffylit, culpabill and convict of all and findrie the heidis and poyntis of Dittay aboue writtin, and crymis contenit particulerlie thairin.

SENTENCE. The Juftice-depute, be the mouth of James Henderfoun, dempftar, decernit and ordanit the said Ifobell to be tane to the Caftell-hill of Edinburgh, and thair to be wirreit⁷ at ane ftaik quhill scho be deid ; and her body to be brunt in affis, as convict of the faidis crymis ; and all hir movabill guidis to be efcheit and inbrocht to our fouerane lordis vfe, as convict of the faidis crymes.

¹ Issobel hearing herself to be reported. Fr. *bruit*. ² Caldron may thou feethe in. ³ Weeks.
⁴ Visited, tormented. ⁵ Stamp, mark, token. ⁶ Basket, *creel*. ⁷ Strangled.

Forestalling and Regrating.

May 19.—JOHNNE REULL, indueller in Leyth.

Dilaitit for contravening the Actis of Parliament, in ffoirstalling and regrait-
ing of tymmer.¹

PERSEWER, Sir Thomas Hammiltoune of Monkland, knycht, Aduocat.

PRELOCUTOURIS in defence, Mr Alexander King, James King.

It is allegit be the pannell, that he can nocht be put to the knowlege of ane Affyse for the cryme lybellit, becaus the tymmer lybellit was bocht be his fervand in Norruay, enterit in the townes buikis, as his awin proper tymmer, and hes payit his Maiesteis custome thairfoir: And for verificatioun thairof, producet the entrie of the tymmer in the townes buikis of Edinburgh, as his proper tymmer, and quhair he payit the custome thairof.—It is anfuerit be my Lord Aduocat, that the allegeance aucht to be repellit, in respect nathing is producet to preve the bying of the tymmer, be him felf or his fervand; and is contrair to the fummondis, quhilk beiris the ffoirstalling of tymmer, befoir the famyn was presentit to marcat.

VERDICT. The Affyse, be the mouth of James Forman, (water bailzie,) chancellor, ffand, pronuncet and declairit the said Johnne Reull to be ffylit, culpable and convict of cowmone Regrating and ffoirstalling of all foirtis of tymmer, cumand and aryveand at the said Poirt and hevin of Leyth, and fa to be repute and haldin: And Clanget and acquit him of the haill remanent poyntes of the said Dittay.—Edward Edzer, merchand burges of Edinburgh, become fouertie for the entrie of the said Johnne the morne, to heir dome pronuncet, &c.

SENTENCE. The Justice, being resoluēt thairwith, and with the Act of Parliament maid thairanent, Decernit and Ordanit the said Johnne Reull to content and pay to our fouerane Lordis Thesaurer and his deputis, the fowme of fourtie pundis money of this realme of North Britane,² as penaltie designat in the said Act of Parliament aganis cowmone Regraiteris and ffoirstalleris, for the first falt. And als, ordanit the said Johnne to find cautioune actit in the buikis of Adiornall, to abstene fra all maner of foirstalling or regraiting of tymmer in tyme cuming, vnder the pane of ane hundreth merkis.³

Appointment of a Justice-Depute.

Jun. 2.—MR ALEXANDER COLUILL, sone to Alexander, Commendator of Culrois,

Gaif his ayth *de fidei administratione* in the Office of Justice-deputrie; and thaireftir was creat and admittit Justice-depute.

¹ Timber. ² This is the first time Scotland is so designated in this Record. Indeed it is very unusual, even for a century after this period. ³ Edzer again becomes his suretie.

Slaughter.

Jun. 26.—WILLIAME GUTHRIE of Ravensbie.

Dilatit of airt and pairt of the Slauchteris of vmq^{le} Patrik Gairdin of that Ilk, and vmq^{le} Robert Gairdin of Tullois, committit in the moneth of I^m.V^c. threfcoir auchtene yeiris.

PERSEWER, Mr Robert Gairdin Younger of Blairtoun.

George Leslie, fear of Kincragie, become plege and fouertie that he fall compeir befor the Justice or his deputis, the thrid day of the nixt Justice-air of the scherefdome of Abirdene, or soner, vpoun xv dayis wairning.

Slaughter — Lebving 'Skatt' or Black-mail — Stouthreif, &c.

Jun. 27.—ALLASTER STEWART M^cGILLIECHALLUM, brother to Johnne Stewart, *alias Johnne Dow M^cgilliechallum* of Tennandrie.

Dilaitit, accuset and persewit be DITTAY following, viz. That is to say, of airt and pairt of the Slauchter of vmq^{le} Johnne Stewart of Bonskeid; committit in the moneth of December, the yeir of God I^m.Vj^c. and fyve yeiris, betuix Dunkeld and Atholl, vpoun sett purpois, provisioun and foirthocht felony. ITEM, for airt and pairt of the Slauchter of vmq^{le} Johnne Stewart, secund sone to the said vmq^{le} Johnne Stewart of Bonskeid; committit about Paisch,¹ in the yeir of God I^m.Vj^c. and sax yeiris, vpoun the landis of Kilbrochene. ITEM, for airt and pairt of the Slauchter of vmq^{le} Williame Leith, att the Kirk of Crathie in Cromar; committ about tuell yeiris fyne, or thairby. ITEM, for cuming with Johnne Dow, his brother, to the boundis of Strathardill, in the moneth of July lastby-past, and compelling of the tennentis of the landis of Strathardill to pay to thame ane skatt² of foure hundreth merkis or thairby; committand thairby manifest Oppressioun. ITEM, for the thiftious Steilling and reving, be way of maisterfull Stouthreif, fra Donaldsoun, chapman, of his pak, with certane merchandice thairin; committit thre yeiris fyne or thairby.

PERSEWER, Mr Robert Lyntoun, Aduocat-substitute.

ASSISA.

Alexander Dumbar, schereff of Patrik Moncur of Chapeloun,	Tho ^s Farguifoun of Bellewchane,
Murray,	Johnne Moncur, sone to the Laird Williame Stewart of Kynnaired,
Sir Thomas Stewart of Garnetullie, knyght,	Colene Campbell of Bothe,
Mr Alex ^r Hay of Kynmwdie,	Angus Williamfoun of Termet,
Dauid Drummond, Chalmerlane	Alexander Flemyng of Monefs,
Robert Chrystie, tailzeour, burges	
to my Lord Drummond,	Thomas Otterburne of Reidhall, of Edinburgh.

VERDICT. The Affyse, be the mouth of Thomas Otterburne, chancillar, ffand, pronunceit and declarit the said Alexander Stewart to be ffylit, culpable and con-

¹ Pash, Lat. *Pascha*, Easter.

² A compulsory tax, contribution, or fine, somewhat similar (in

vict of airt and pairt of ilk ane of the pointis of Dittay, *respectiue* aboue writtin, and of the crymes contenit in the famin, conforme to his Confessioun producet in judgement, quhilkis he ratifeit.

SENTENCE. And thairfore, the said Justice-depute, be reasoun thair of, and of his speciall Convictioun, of the thiftious steilling and reving, be way of masterfull Stouthreiff, fra Donaldsoun, chapman, of his pak and merchandice contenit thairin, be the mouth of Robert Montgomerie, dempstar, Ordanit the said Alexander Stewart to be tane to the mercat Croce of Edinburgh, and thair to be hangit vpoun ane gibbet, quhill he be deid; and all his landis, heretageis, takis, ftedingis, rowmis, possessiounis, coirnis, cattell, guidis and geir to be fforfalt and escheit, &c.

Slaughter of Alexander Lord Spynie.

Jul. 8.—DAUID LYND SAY, fear of Edzell; Thomas Lyndsay, sone naturall and feruitour to Dauid elder of Edzell; Harie Lyndsay, sone to Dauid L. of Kynnettillis; Mr Johnne Lyndsay, sumtyme Minister at, sone to Johnne L. of Barrese, feruitour to the auld Laird of Edzell; George Lyndsay, brother to the Laird of Covingtoun, also feruitour to the Laird of Edzell elder; Mr James Lyndsay, sone to L. of Brodland; Andro Stratoun; Home, sone to Robert Home of the Heuche; Gawin Lyndsey, father-brother to the said Laird of Covingtoun.

COMPERIT George Guthrie, feruitour to vmq^{le} Alexander Lord Spynie, and producet our fouerane lordis Letteris, dewlie execute and indorsat, purchest att the instance of Dame Jeane Lyoun Lady Spynie, the relict; Alexander Maister of Spynie, eldest sone; Dauid Erle of Craufurd Lord Lyndsay, &c., Sir Harie L. of Carriestoun, knyght, Sir Johnne L. of Woidwrae, knyght, as brether, with the remanent kyn and freindis of vmq^{le} Alexander Lord Spynie; to tak fouertie of the said David, &c., that thai sould compeir befor the Justice or his deputis this day and place, in the hour of cause, to vnderly the law, for airt and pairt of the Slauchter of the said vmq^{le} Alexander Lord Spynie. Be the quhilkis Letteris, the saidis personis war denunceit our fouerane lordis rebellis and put to the horne. Vpone the production quhairof, the said George Guthrie askit instrumentis, and protestit for releif of Harie Lyndsay of Carrestoun, cautioner for reproduction thair of.

this instance at least) to *Black-mail*. *Scatt*, properly, was a feudal tax anciently paid, in Shetland, to the King of Denmark; and at present Lord Dundas draws a considerable sum of *Scatt*; which is understood to be payable chiefly in kind, *e.g.* butter and oil, &c.

Treason — Celebration of the Mass, &c.

Sep. 25.—WILLIAME MURDOCHE alias M^cKIE, Preist, borne in Dunkeld.

Dilaitit, accuset, and perfewit be Mr Robert Lyntoun, Aduocat, substitute to our fouerane lordis Aduocat, FOR contravening his Maiesteis Actis of Parliament, in the treffonabill faying of Mefs, at dyuerse tymes, within the houffis and places following, in the monethis of Januare, ffebruare, Marche, Apryle, Maij, Junij, Julij, Auguft, September, October, November and December, in the yeiris of God I^m.V^c. fourfcoir fourtene, fyftene, faxtene, fevintene, aughtene, nyntene, fax hundreth, fax hundreth ane, tua, thre, four, fyve, and fax hundreth and fax yeiris ; at the leift, in ane or vther of the faidis monethis and yeiris of God : And that within the places and houffis of Strabogie, Boig of Geicht, the Lady Sutherlandis houle in Suderland, Dwnrobyn, the Lady Auchindownis houle, in Mr Alexander Leslieis hous, Patrik Butteris houle, besyde Aberdene. ITEM, for faying of ane Saul-mefs (*soul-mass*) for the Lady Auchindoun, in ane pur mannish houle in Strabogie, a littill eftir hir deceife. ITEM, in the Guidman of Carrones hous, callit Grant, and in Williame Leslie of Conrakis houle ; and in dyuerse vtheris places and houffis in the North ; being accompaneit with dyuerse our fouerane lordis leigis at the faidis Messis : Committing thairthrow the cryme of Treffone, and incurring the panes specifeit in the faidis Actis of Parliament, maid aganis the fayeris of Mefs, viz. tynfall and fforfaltour of lyfe, landis and guidis ; as at mair lenth is contenit in the Dittay and Depositiones maid be the said Williame thairupone.

VERDICT. The Affyse, be the mouthe of Abrahame Hammiltoune, smyth, chancellor, in respect of his Confessioun, maid judiciallie, of the haill Dittay and Depositiones producet, ffand, pronunceit and declairit the said Williame Murdoch to be ffylit, culpable and convict of the crymes aboue specifeit.

Thairefter, the said Mr Robert Lyntoun, substitute to our fouerane lordis Aduocat, producet ane Warrant of his Maiesteis, vnder his hienes hand-writt, desyreand the Justice, accoirding thairto, to pronounce DOME aganis the said Williame Murdoch, Preist, quhairof the tennour followis.

To OUR right trustie and weilbelouit counsels and counfallouris, the Erle of Dumfermeling, our chancellor, and remanent Lordis and vperis of our Previe Counfall, in our kingdome of Scotland, these.

JAMES R.

RIGHT TRUSTIE and weilbelouit counsels and counfallouris, We greit 3ow weill. Whearas, ane Murdoch alias M^ckie, Preist, was apprehendit by the Bischope of Murray, and is presentlie in waird, within the tolbuthe of Edinburghe, wher he hes lyne this long tyme past : OUR pleafour and Will is, that 3ow cause him be proceidit aganis, in maner following : first, that he be presentit befor our Justice pair, and abyde his ordiner tryell, wherin no dout he will be ffund culpable, vpon his awin Confessioun ; and than our pleafour is, that our said Justice do pronounce the judgement eftir following aganis him ; in appointing him to be tane to the mercat croce of Edinburghe, being clad in his Mefs-

claithes, in the same forme that he wes takin ; and eftir he hes bene presentit to the vew of the hole people, he than be strypped of all his Mefs-clothes ; and the same, with all his vther Popisch baggadge that was apprehendit with him, to be presentlie cast into the fyre, pair reddie for the purpose, to be confwmed and brunt to asches : And pairwith, that he be adiudget to be BANISCHET furth of all our dominions, indureing his naturall lyfe ; vnder the pane of daith, in caice of his retorne bak to ony pairt of þe same : And willing 3ow to give vnto our Justice particuler directioun heiranent, and to be cairfull to see the same, in everie poynt, execute, We bid 3ow hairtly fairweill. FROME our Court at Theobaldis, the xvij of September 1607.

SENTENCE. Accoirding to the quhilk Warrant and directioun, the Justice-depute decernit and ordanit the said Williame Murdoche, preist, to be takin, on Mononday nixt, to the mercait Croce of Edinburghe, cled in his Mefs-claythis, and thair to stand chenzzeit,¹ fra ten houris to tuelf befoir none ; and thaireftir, ane fyre being kyndillit at the said Croce, the said Mefs-claithes to be caffin af him and brunt in the said fyre, with all his vther Popische baggadge that war apprehendit with him. Quhilk solemnitie being vset, Ordanis the said Williame to be Banischet furth of our souerane lordis haill dominions, during his lyfytyme ; and nawayis to retorne within the samyn, vnder the pane of daith : And to be transportit bak agane fra the said mercait Croce to the said Tolbuith of Edinburghe, thair to remane quhill ane schip be in reddines to transport him. Quhilk was pronuncet for dome.²

Cruel Oppression — Murder.

Nov. 5.—WILLIAME BONAR, in Condry.

Dilaitit, accuset and persewit be Dittay following, viz. FORSAMEKILL as he, in the moneth of October, the yeir of God I^m.Vj^c. and fyve yeiris, haifing requyret Patrik Philp in Condry, his coitter,³ to geve him the lane⁴ of his horse, for leiding of certane his schorne peis, than standing stoukit⁵ vpone ane pairt of the saidis landis of Condie, occupyit be him ; lyk as, for satisfeing of the said Williames desyre, haifing directit his naig, with vmq^{le} Robert Quhyte, his servand, and ane sled,⁶ to the leiding of his peis. Trew it is, that the said Williame, vpone the . . . day of October, the yeir of God aboue writtin, at the said vmq^{le} Robertis cuming to the feildis, quhair the saidis peise war roukit,⁷ becaus the said Robert refuifit to tak on sic extraordiner burding as the said naig was vnhable to draw, he thairfoir maist prouddie and contemptiouflie lousset his belt, and with the bukillis and remanent irnes thairof, maist crewallie strak the said vmq^{le} Ro-

¹ Chained. ² 'Sept. 27, 1607.—A Preist, who had been a certaine time in waird before, in the Tolbuith of Edinburgh, was brought down, on the mercat day, to the Mercat-croce, with all his Messe-cloaths upon him, wherewith he was taken, with his chalice in his hand. He stayed at the Croce from ten hours till twelve. Then all his Masse-cloathes and chalice were burnt in a fire beside the Crose, and himself carried backe to waird.'—*Calderwood's MS. Church History.* ³ Cottar.

⁴ Loan. ⁵ Put up in *stouks* or shocks, to *win* or cure. ⁶ Sledge, a sort of cart without wheels, still in use, in mountainous districts, for leading in meadow hay, turf, &c. ⁷ Put up in rucks, *richs*.

bert in the heid and face, and with his feit and kneis strak him in his breift, bellie and fydis, and brak his haill intrallis within him: And thaireftir, fshot¹ him fra him doun ane watter-bra,² quhair he fell in ane watter, and remanit bleiding thairin ane grit fpace thaireftir, at mouth and neife; be occasioun of the quhilkis crewall woundis and ftraikis, gevin to the faid vmq^{le} Robert, he immediatlie thaireftir tuik bed, quhairin he continewit bedfast, in grit dollour and difeafe, be the fpace of tuentie dayis thairefter, or thairby; and at laft, vpone the . . . day of November thaireftir, he depairtit this lyfe, of the faidis hurtis and woundis; and fa, he was maift crewallie flane be the faid Williame Bonar: And he is airt and pairt thairof; committit vpone fet purpois, prouifion and foirthocht fellonie.

VERDICT. The Affyse, be the mouth of Williame Birsoun in Clow, ffand, pronuncet and declarit, all in ane voce, the faid Williame Bonar to be Clenget, innocent and acquit of the cryme aboue writtin, and haill circumftances thairof. Quhairvpoun the faid Williame askit instrumentis.

Slaughter — Shooting of Hagbuts and Pistolets.

Nov. 6.—JOHNNE FORBES, brother to Williame Forbes of Corfindae.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Williame Broun, fervand to Johnne Irwing of Ardtanfurd, committit be him and his complices, callit 'THE COMPANIE AND SOCIETIE OF THE BOYIS,' vpone the landis callit the Peill of Lumfannen, in the moneth of November, the yeir of God I^m.Vj^c. and fyve yeiris. ITEM, for airt and pairt of the Slauchter of vmq^{le} Robert Merfar in Tombeg, committit be him and his complices foirfaidis, in the moneth of Junij laftbypast, at Magnus Garioches hous, in Drumnahoy. AND laft, for contravening of our fouerane lordis Actis of Parliament, in beiring and weiring of hagbuttis and pistolettis, daylie and continuallie, this thre yeir bygane; speciallie, for invaiding and perfewing of Williame Irwing, brother to the Laird of Drum, and schuiting of ane pistolet at him, betuix his awin duelling hous and the Kirk of Kyncairdin, in the moneth of July or thairby, I^m.Vj^c. and fax yeiris.

PERSEWAR, Sir Thomas Hammiltoun.

PRELOCUTOUR in defence, Mr Johnne Russell.

The Aduocat producit the Dittay aganis Johnne Forbes, with the Letteris of Hoirning, and defyrit proces.—Mr Johnne Russell producet ane Letter of Relaxatioune, be the quhilk he is relaxit fra the horne, for the crymis contenit in the Dittay, and thairupoun askit instrumentis.—The pannell takis instrumentis that na partie infistis in the perfute of this Dittay, except my lord Aduocat. It is allegit, that na proces can be led in this matter, becaus he aucht to be fummond vpoun xv dayis wairning, feing he is the Kingis frie fubiect; and for instruct-

¹ Forcibly pushed, *shoved*.

² A brae or sloping bank above a stream.

ing thair of, citit the practik betuix the Montgomeries and Cuninghame, and the vther of Newarkis.—It is anfuerit, aucht to be repellit, in respect of the Relaxatiounne producet, beiring the pannell to haif bene at the horne of befoir, for the crymes contenit in the Dittay; vpoun the quhilk Hoirning Commiffiounne was direct to apprehend the pannell, rebell and at the horne; and being apprehendit, is brocht fra the waird to the bar; and thairfoir, na delay aucht to be grantit vpoun xv dayis.

THE Justice findis proces, nochtwithstanding of the Alledgeance: Quhairupone the Aduocat takis instrumentis.

It is alledgit be the pannell, that the Justice can nocht proceed in the mater aganis *Johnne Forbes*, for the crymes contenit in the Dittay; becaus, be Act of Secreit Counfall, my Lord Forbes wes maid Justice to pronounce dome (of) Baneifment aganis the said Johnne; quho hes pronounceit the said Dome, in ane Justice Court, hauldin be him; and gif he hes nocht pronounceit the said dome, the said Johnne offerit him to be Baneift, and to find caution, actit in the Buikis of Adiornall, to pass aff the countrey, vnder sic panis (as) the Justice will moderate; and thairfoir na proces: And for verificatioun thair of, produceit the Act of Counfall; and eikis,¹ that he was tane before the expyring of the tyme appointit to his baneifment. The Aduocat anfuerit, that the Act of Counfall can nocht stay proces; feing that (there) is na thing produceit, declaring him to be exilit; nather yit is the Dome pronounceit: And siclyke, the said Johnne man² be putt to ane Affyse, except he can schaw Respett, Remiffioun or clangeing; and alse, the Aduocat acceptis the Secreit Counfallis ordinance.

It is allegeit, that the pannell can nocht be putt to ane Affyse for *Merfar*, feing he wes ordanit to be Baneift for Brounis Slauchter; and thairfoir the Sentence and dome of Baneifment standing, he can nocht be put to ane Affyse for *Merfar*. It is anfuerit be the Aduocat, the Argument makis him nocht lauchfull to slae in Junij, he being baneift in March. ITEM, it is allegeit that na proces for *Merfaris* slauchter, becaus he wes nocht apprehendit for the samin. It is anfuerit, he wes att the Horne for the Slauchter, and he may be challengeit for the samin; and produceit the Hoirning.—The Commiffioun of apprehensiounne being produceit, it is alledgit, that Commiffioun fallis, in respect of Affythement, and ane Act, makeand Arthour Lord Forbes Justice, to pronounce dome of Baneifment. It is anfuerit be the Aduocat, that the caus of the Commiffioun wes rebelloun, quhilk wes nocht purget, quhill eftir his taking.

THE Justice findis proces, nochtwithstanding of the pannellis fyrst alledgeance maid, that Brounis Slauchter sould nocht be put to ane Affyse.

It is allegeit, of new, that gif ye will pitt the mater to ane Affyse, and be

¹ Adds farther, subjoins.

² Must.

convict, ye can nocht pronounce na forder Dome nor¹ according to the Act of Counfall. It is allegeit for the Slauchter of Merfar and weiring of pistoletis, he can nocht be putt to ane Affyse, feing he wes nocht tane for that cryme; and that wes nocht *in rerum natura* quhen the Commiffioun wes grantit. It is anfuerit, that the pannell wes fummond vpoun xv dayis warning, for the saidis crymes; and being in waird, he may be brocht out and put to ane Affyse. And the Aduocat produceit the Hoirning aganis the pannell for the Slauchter of Merfar.—The Letteris (of Hoirning being) produceit, it is allegeit that the famin s null, becaus the said Johnne Forbes is fummond only att the mercat croce of Abirdene. The Aduocat anfueris, that he aucht (to) reduce; and the Justice is nocht Judge to the nulling² of Hoirningis.

THE Justice Ordanis the mater to be putt to ane Inqueist, nochtwithstanding of the allegeances.—The pannell offeris him felf in his Maiesteis Will, for the weiring and schuiting of pistolettis.

ASSISA.

James Cunningham, father-brother to the Laird of Barnis, James Dikfoun of Hirdrig, Andro Abircrumbie of Straruthie, Williame Sydferff of Ruchlaw, Johnne Airmour, mercheand burges of Edr.³

The Aduocat, for verificatioun of the Dittay, produceit twa Letteris of Hoirning, and the said Johnne Forbessis Depositionis, confessing the crymes contenit in the Dittay.—It is allegit aganis *Harie Skirving*,⁴ that he can nocht be reffaut on this Affyse, becaus thair is feid⁵ standing betuix the Laird of Drum, on the ane pairt, and the name of Forbes, on the vther pairt; and the Erle of Marshell, to quhom this Affysour is vassall, is sifter-bairnes to the Laird of Drum. It is anfuerit, aucht to be repellit; in respect of the Act of Parliament discharging all feidis; and that thair is na deidlie feid qualifeit betuix the Erle Marshell and this pannell.—The pannell, eftir reiding of the Dittay, denyis the Slauchter of Robert Merfar, or that he was ather airt or pairt thairof.—The Aduocat repeittis to the Affyse the pannellis Confessioun, with the Letteris of Hoirning for the crymes contenit in the Dittay and Act of Counfall. The Aduocat protestis for Wilfull Errour aganis the Affyse, in cais thay acquit; and that the Affyse be reteanit in the Tolbuth, quhill the Kingis Maiestie and his Counfallis will be knawin.—The pannell takis instrumentis of the Affyses determinatioun, in Clengeing of the pannell, for the Slauchter of Broun; and desyres the Justice to be advyset with the Counfall, anent the dome, in respect of the Act of Counfall, producet be him in this proces.

VERDICT. Eftir accusatioun of the said Johnne Forbes, be Dittay, of the hail crymes aboue writtin, and verificatioun thairof, be his Depositiones, sub-

¹ Than. ² Annulling, reducing. ³ The remainder of the Assise composed of 'mercheandis.'
⁴ Of that ilk. ⁵ Feud, deadly enmity.

feryuit with his hand, as also subferyuit be my Lord Halrudhous and Mr Johnne Prestoun, Collectour, producet be my Lord Aduocat, togidder with the Letteris of Hoirning, &c., the Affyse, be pluralitie of voittis, be the mouth of the said Williame Sydferf of Ruchlaw, chancellor, ffand, pronuncet and declairit the said Johnne to be Clene, innocent and acquit of airt and pairt of the Slauchter of the said vmq^{le} Robert Merfar : AND ffand, pronuncet and declairit, be pluralitie of voittis, the said Johnne to be ffylit, culpabill and convict of airt and pairt of the slauchter of the said vmq^{le} Williame Broun ; and for beiring, weiring and schuiting of pistolettis, contrair the tennour of the Actis of Parliament. And that, in respect of his awin Depositiones and Confessioun producet, subferyuit with his hand.

SENTENCE. For the quhilk cause, the said Justice-depute decernit and adiudget the said Johnne Forbes, be the mouth of James Henderfoun, dempster, to be tane to the mercait Croce of Edinburgh, and thair, vpone ane scaffold, his heid to be ftrukin frome his body ; and all his moveabill guidis to be escheit and inbrocht to his hienes vse, as convict of the crymes aboue-writtin : Quhilk wes pronuncet for dome.

Sorcery — Witchcraft — Incantation — Poisoning, &c.

[THE singularity of the following Trial cannot fail to be remarked by all who have bestowed any attention upon the history of the Superstitions of their native country. In illustration of several of the circumstances detailed, the Editor considers that the CONFESSIONS of ISSOBELL HALDANE, preserved amongst the Warrants of the Privy Council of Scotland, will prove an acceptable accompaniment. The Editor has not yet discovered whether that unfortunate woman suffered the usual death which awaited such a Confession. It is, however, but too probable that she was put to death, by being ‘brunt,’ at Perth, in terms of her own Depositions.]

Dec. 18.—BARTIE PATERSOUN, tasker in Newbottill.

Dilaitit of the cryme of Sorcerie and Witchcraft, in abuseing of the peopill with charmes and dyuerse foirties of Inchantmentis ; and ministring, vnder forme of medecine, of poyfoneable drinkis : AND of airt and pairt of the Murthour of Johnne Myller in ffurd-mylne, about Martimas last, and of vmq^{le} Elizabeth Robiesoune, be the saidis poyfoneable drinkis, viz. FOR cureing of James Broun in Turnydykis of ane vnknawin diseafe, be ministrating to him of drinkis, rubbing him with sawis¹ maid of dyuerse grene herbis, and caufing him pas hame to his awin hous : and at his bed fyde to sitt down on his kneis, thre feuerall nychtis, and everie nycht, thryse nyne tymes, *to ask his helth at all leving wichtis, aboue*

¹ Salves.

and vnder the earth, in the name of JESUS. And thaireftir, ordanit the faid James to tak nyne pickillis of quheit, nyne pickillis of falt and nyne peces of rowne-trie,¹ and to were thame continuallie vpone him, for his helth; committing thairby manifest Sorcerie and Witchcraft. ITEM, for abuseing of the people, with ane certane watter, brocht be him furth of the Loch callit the Dow-Loche, besyde Drumlanrig, and cureing of his awin bairne with the faid Loche watter, be wasching of the faid bairne, at everie nuke thairof, thryfe; and casting in of the bairnis fark² in the faid Loche, and leveing of the fark behind him; affirming, that gif any fould come furth of the Loche, at that tyme, the patient wald convalesce, and gif na thing appeirit to him, the patient wald die: AND for cayreing of the faid Loche watter to findrie of the cuntrie, that war visseit with feiknes, or quhais beiftis war feik or foirspokin:³ Speciallie, for the miniftrating thairof to Alexander Clerk, in Creichtoun, for his helth; be caufing him, at ilk tyme quhan he liftit the ftoupe,⁴ quhairin it was, to fpaik thir woirdis: ‘*I lift this watter, in the name of the Father, Sone and Haly Gaist, to do guid for thair helth for quhom it is liftit;*’ quhilkis wordis fould be repeatit thryfe nyne tymes. AND for vseing of thir charmes following, for charmeling of cattell; ‘*I CHARME thé for arrow-schot, for dor-schot, for wondo-schot, for ey-schot, for tung-schote, for lever-schote, for lung-schote, for hert-schot, all the maist, in the name of the Father, the Sone and Haly Gaist. AMEN.*’ AND for behaifing him self as ane cownone Sorcerer, in abuseing of our fouerane lordis leigis, thir diuerse yeiris bygane, be his devillifche practizes, vpone dyuerse feik folk and feik bestiall; and vseing of dyuerse vther foirtis of Inchantment, expres aganis the lawis of God and Actis of Parliament.

As at lenth is contenit in the faid Barteis Depositiones, maid in presens of the Presbiterie of Dalkeith, and Dittay formet thairupoune.

VERDICT. The Assyse, be the mouth of Thomas Megget of Maistertoun, chancellor, ffand, pronuncet and declairit the faid Bartie to be ffylet, culpable and convict (conforme to his awin Confessioun) of the haill crymes aboue writtin.

SENTENCE. To be tane to the Castell-hill of Edinburghe, and thair to be wirreit at ane ftaik, quhill he be deid; and thaireftir his body to be brunt in asches; and all his moveable guidis and geir, gif he ony hes, to be escheit and inbrocht to his hienes vse, &c.

¹ The mountain-ash. Its virtues are even yet held in great repute, as a charm against Witchcraft, &c.

² Shirt. The purpose of so doing was to leave the disease on the shirt, and to make an offering to the *genius loci*. In Ireland, at this day, ‘Holy Wells’ are commonly resorted to by the sick, &c., who, after ablution and drinking of the spring, leave pins and pieces of rag, torn off some part of the patient’s dress.

³ Bewitched, charmed.

⁴ A sort of wooden bucket or pitcher, used for holding or carrying water.

DEPOSITIONES of ISSOBELL HALDANE, *suspect of WISCHCRAFT*,
 CONFESSIT *be hir the 15 of Maij 1623, as followis.*

BEING convenit befor the Sessioun of Perth, eftir prayeris maid to God to oppin hir hairt and louse hir tounge to Confes the treuth:—Being askit, ‘Gif scho hed onye skeill of cureing men, wemen or bairneis that war diseisit?’ Scho anfuerit, that scho had nane. Being requirit, ‘Gif scho cureit Andro Duncanes bairne?’ Anfuerit, that, according to the directioun of Jonat Kaw, scho went with Alexander Lokart dwyn¹ to the Turret-Port, tuik watter frome thence, being dwyn; brocht it to Andro Duncanes house; and thair, wpone hir kneis, in the name of the Father, Sone and Halye Goost, weusch² the bairne! Eftir that, tuik the watter, with the bairneis fark, accompaneit with Alexander Lokart, and kuist³ baith in the burne; bot in the going, scho skaillit⁴ fwm, quhilk scho rewis ane evill rew,⁵ becaus that if onye hed gone ower it, thay hed gottyn the ill.⁶ ITEM, being askit ‘If scho hed ony conversatioun with the ffarye-folk?’ Anfuerit, that ten yeiris syne, lying in hir bed, scho wes taikin furth, quidder be God or the Deuill scho knawis nocht; wes caryit to ane hill-syde: the hill oppynit, and scho enterit in. Thair scho stayit thrie dayis, viz. fra Thurisday till Sondag at xij. houris. Scho mett a man with ane gray beird, quha brocht hir furth agane.

ITEM, that same day JOHNE ROCH deponit, that about that same tyme, he beand in James Chrystie the wrichtis buith, causing the wricht mak ane cradill to him, becaus his wyff wes neir the down-lying; the said Issobell Haldane com by, desyret him nocht to be sa haistie, for he neidit nocht; his wyff sould nocht be lichter⁷ till that tyme fywe oulkis,⁸ and then, the bairne suld neuer ly in the cradill, bot be borne, bapteist, and never souk, bot die and be tane away. And as the said Issobell spak, so it cam to pass, in euerie poynt.

THE said Issobell being demandit, ‘How scho knew that?’ Anfuerit, that the man with the gray beird⁹ tauld hir. ITEM, the said Johne Roch deponit, that Margaret Buchannan, spous to David Rind, being in helth, at hir ordinare wark, the said Issobell Haldane come to hir, and desyreit hir mak hir for deith;¹⁰ ffor befor Fastingis-ewin, quhilk wes within few dayis, scho suld be taikin away. And as scho said, so it wes; befor that terme the woman died. Being askit, ‘How scho knew the terme of hir lyfe?’ The said Issobell anfuerit, scho hed speirit at that same man with the grey beird, and he hed tauld hir.

THE xvj day of May 1623. PATRIK RUTHUEN, skynner in Perth, compeirit and declairit, that he being wischit¹¹ be Margaret Hornisclench, Issobell Haldane com to fie him; scho com in to the bed and strauchit¹² hir self aboue him, hir heid to his heid, hir handis ower him, and so furth, mumbling sum wordis; he knew nocht quhat they war.

THE said Issobell Confessit the said cure; and deponit, that befor the said Patrik wes wischit, scho mett him, and foirbad him to go till scho had gone with him.

THE xix day of Maij 1623. Compeirit STEPHANE RAY in Muretoone, and deponit, that thrie yeiris syne, that Issobell Haldane haueing stollin sum bere furth of the Hall of Balhouffye, he followit hir, and brocht hir bak agane; scho chaipit¹³ him on the schulder, saying, ‘Go thy way! Thow fall nocht win thy self ane bannok of breid for yeir and day!’ And as scho threttinit, sa it cam to pas. He dwynnit,¹⁴ haelie diseiseit.

THE said Issobell Confessis the away-taking of the bere, the diseise of the man, and affirms, that onye scho said, ‘He that delyueret me frome the ffarye-folk fall tak amendis (on) thé!’ ITEM, the same day scho confest scho maid thrie feuerall caikis, euerie ane of thame of ix curneis¹⁵ of meill, gottin fra ix wemen that wer maryit madynnis; maid ane hoill in the crowne of euerie ane of theme, and

¹ Down. ² Washed. ³ Cast, threw. ⁴ Spilt some. ⁵ Regrets or *ruet* bitterly. ⁶ Had any one stepped over the place, the evil or disease would have been transferred from the sick child to him. ⁷ Lighter, i. e. delivered of her child. ⁸ Five weeks. ⁹ This familiar spirit seems to be the same as ‘*Thom Reid*,’ mentioned in the extraordinary Trial of BESSIE DUNLOP. ¹⁰ Prepare for death. ¹¹ Bewitched, *fore-spoken*.
¹² Stretched. ¹³ Clapped. ¹⁴ Pined away, without any apparent cause. ¹⁵ Handfuls, small-quantities.

pat ane bairne throw it thrie tymeis, 'in the name of the Father, Sone and Halye Gooft,' to wemen that pat the saidis bairnes thryse throw bakward, wfeing the saidis wordis. ITEM, the said Iffobell confest, that scho went, silent, to the Well of Ruthuen,¹ and returneit silent, bringing watter from thence, to wasch Johne Gowis bairne: Quhen scho tuik the watter frome the Well, scho left ane pairt of the bairnes fark at it, quhilk scho tuik with hir for that effect; and quhen scho cam home, scho weufche the bairne thairwith. In lyk maner, scho Confest, scho had done the elyk to Johne Powryis bairne.

THE xxvij day of Maij 1623. THE said Iffobell confessit, that scho had gewin drinkis to cure bairneis; amongis the rest, that David Moreise wyff com to hir, and thryse for Goddis faik askit help to hir bairne that wes ane scharge:² And scho fend furth hir sone to gether fochsterrie leaweis,³ quhair of scho directit the bairnes mother to mak a drink.—Bot the bairneis mother deponit, that the said Iffobell Haldane, on-requirat, cam to her house and saw the bairne; said, 'it wes ane scharge taikin away;' take on hand to cure it; and to that effect, gaiff the barne a drink; efter the reffait quhair of the bairne died.

WILLIAME YOUNG, Scribe to pe Presbiterie of Perth, at command of pe famyne, with my hand.

JONAT. DAUIDSONE, Notare Publict and Clerk to the Seffioune of Perth, at thair command and directione, with my hand.

[*Mr William Boirthuik, Justice-Depute.*]

Slaughter.

Feb. 3.—JAMES MURE, Younger of Auchindrane.⁴

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Sir Thomas Kennedyie of Cullane and Williame Dalrumpill.

PERSEWER, Sir Thomas Hammiltoune of Bynnie, knycht.

PRELOCUTOURIS for the pannell.

The Lairdis of Blair, Cauldwall, Heiffilheid, Rowallane, Mr Johnne Ruffell, Mr Laurence Mcgill.

My Lord Aduocat producet the Letteris deulie execute and indorsat, quhairby the defenderis thairin contenit ar denuncet to the horne. Mr Johnne Ruffell producet Letteris of Relaxatioune, of the dait the thrid of Februlare instant; be the quhilkis the pannell is relaxit for the crymes aboue writtin. The pannell takis instrumentis of his entrie; and efter reiding of the Summondis, offeris him self reddie to abyde the tryell of the Law, for the crymes contenit thairin-till; and disassentis fra all continewatioune. The Aduocat producet the Counfallis Warrant for continuatioune of this dyet to Fryday nixt; and committing the pannell to waird in the meane tyme.

THE JUSTICE, for obedience of the Counfallis Warrant, continewis this matter to Fryday nixt, and ordanit the pannell to be wairdit in the Tolbuith of Edinburgh, in the meane tyme.

¹ The superstition of fetching water from *Holy-Wells*, as they were and still are often called, was very prevalent in Scotland, as well as in all Catholic countries. Some shred of dress belonging to the diseased person was left on the brink of the well, in token of the disease having passed away along with it. In Ireland, the bushes near to such wells are entirely covered with rags of every colour, as offerings to the *Genius loci*. ² SHARG, a creature pined away, by Witchcraft, an evil eye, &c. A changeling. ³ Leaves of an herb. Perhaps star-grass, bog-star-grass. ⁴ Vid. Jul. 17, 1611.

[*Mr Williame Hairt, Justice-Depute.*]

Feb. 5.—THE JUSTICE continewis this matter to the secund day of Marche nixtocum; and ordanis the pannell to be wairdit in the Tolbuith, in the meane tyme.¹

Slaughter.

Feb. 5.—GEORGE MURRAY of Brochtoune.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James M^cCulloche, appeir- and of Torhouse; committit in November laft.

PERSEWARIS.

Johnne M^cculloche, as brother; William M^cculloche of Mertoune, Thomas M^cculloche of Barholme.

THE JUSTICE continewis this matter to the morne.²

Feb. 6.—The persewaris passis fra the perfute of the Laird of Brochtoun for the said Slauchter, conforme to the cowmoning.³

Mutilation.

Feb. 19.—JOHNNE DUNCANE, elder, myller in the Brig of Hailes, and Johnne Duncane, younger, meilmaker in Edinburgh.

VERDICT. Fylit, culpable and convict of airt and pairt of the Mutilatioun of Robert Daidfoun of tua fingaris of his left hand; committit be thame in the moneth of September I^m.Vj^c. and fax yeiris, vpone set purpois, prouisioun and foirthocht fellonie.

SENTENCE. To be wairdit within the Tolbuth of Edinburgh, thairin to remane vpone thair awin expensfis, ay and quhill thay haif satisfeit the said Robert Daidfoun, pairtie, for his hurt and skayth aboue writtin, and obtene his letteris of Slanes thairupoune: And alse, Ordanit thair haill moveabill guidis to be escheit to our fouerane lordis vse, as convict of the said cryme.

Slaughter.

Feb. 23.—WILLIAME KEITH, sone lauchfull to Alexander Keith of Auchquhirsk.

Dilaitit, accuset and persewit be Mr Thomas Henderfone, Aduocat, substitute to our fouerane lordis Aduocat, of the crymes following, viz. fforfamekill as, vpone ffryday the nyntene day of ffebruar instant, the said Williame haifing fallin out, in som iniurious speiches with vmq^{le} Thomas Colstoun, Inglifman, at the drink, in Griffell Russellis hous in Bruntieland; he thaireftir rancounterit with the said vmq^{le} Thomas, befyde the schoir of the said burch of Bruntieland;

¹ It is again continued; and Mure ordered to be kept in ward.

² Plegio, Johanne Vause de

Barnebarroche. ³ Commoning. It is likely that the private parties compromised the matter, and that Letters of Remission were procured upon their joint application, on producing Letters of Slains.

and thair, maist crewallie, with his drawin swoird, strak the said vmq^{le} Thomas vnder the left pape, and slew him thairwith: And the said William is airt and pairt of the slauchter of the said vmq^{le} Thomas.

PERSEWERIS, Mr Thomas Henderfonne, Mr Robert Foullis, aduocat.

PRELOCUTOR for the pannell, Mr Johnne Ruffell.

ASSISA.

Aulay M ^c caulay of Ardincapill,	Arch ^d Edmestone of Ballintone,	Hew Dalzell, merchand burges of
George Murray of Brochtoun, ¹	Johnne Ahannay, Provoost of	Edinburgh,
James Lokhart of Ley,	Wigtoun,	Symone Brentoune, burges thair,
Williame Blair of Balgillo,	Patrik Somervell, merchand	George Redik,
. . . . Leith of Harthill,	burgess of Edinburgh,	Geo. Rollok, portioner of Craigie,
Sir Alex ^r Colquhoun of Lufs, kny ^t ,	Donald Thoronetoun, burges thair,	Vthreid M ^c dowell of Mondurk.

VERDICT. The Assyse, be the mouth of the said Vthreid M^cdowgall of Mondurk, chancellor, ffand, pronuncet and declairit the said Williame Keith to be ffylit, culpable and convict of airt and pairt of the Slauchter of the said vmq^{le} Thomas Colftoun; committit in maner and at the tyme specifit in the said Dittay.

SENTENCE. To be takin to the mercait croce of Edinburgh, and thair, vpone ane skaffold, his heid to be strukin frome his body; and all his moveabill guidis and geir to be escheit and inbrocht to his Maiesteis vse, as convict of the said cryme. Quhilk was pronuncet for dome.

Child-murder.

Feb. 24.—ISSOBELL THOMESOUNE, dochter to Robert Thomesoun in the Watter of Leyth.

Dilaitit of the crewall and vnnaturall Murthour and distruction of hir awin infant bairne; committit be hir, immediatlie eftir hir delyuerie thairof, vpone the aucht day of Februare instant, secretlie, within hir fatheris dwelling hous in the Watter of Leyth.

VERDICT. The Assyse, in ane voce, be the mouth of Thomas Clerkfoun, but-terman, chancellor, ffand, pronuncat and declairit the said Issobell, conforme to hir awin Confessioun, to be ffylet, culpable and convict of the crewall Murthour and distruction of the said bairn.

SENTENCE. To be tane to the Castell-hill of Edinburgh, and thair to be hangit, quhill scho be deid; and hir haill moveabill guidis, gif scho ony hes, to be escheit, &c.

Treason — Murder under Trust, &c.

Mar. 2.—JAMES WATSOUN, sone in law to James Hammiltoun of Scheirell; and James Hinchelwoid, seruitour to James Hammiltoun Younger of Spittelcheill.

Dilaitit of airt and pairt, red, counfall and foirknowledge of the crewal Mur-

¹ See Feb. 5, 1508.

thour of vmq^{le} George Tuedie; committit be the faid James Hammiltoun of Spittelcheill, vpone Sanct Leonardis-evin, in Nouember laft, within ane barne of Spittelcheill; the faid James, the tyme of the committing thair of, haifing confultit and devyfet the famyn with Robert Craufurd, his guid-brother, and with the faidis James Watfoun and James Hinchelwoid, of the forme and maner thair of, viz. THAT the faid James Hinchelwoid fould fecreitlie convoy ane mell¹ in the barne, quhair the faid George Tuedie fould be murthourit; and that the faid George (his) bed fould be maid in the faid barne, and the faid James Watfoun to ly with him: LYK AS, about tuelf houris at evin, in the faid nycht, the faid vmq^{le} George Tuedie being lyne down in his bed, within the faid barne, luiking for the faid James Watfones cuming to ly down with him, the faid James Hinchelwoid, James Hammiltoun and James Watfone come all in togidder within the faid barne; and as the faid James Watfone was taking af his claithe, the faid James Hammiltoun, with the faid mell in his hand, in prefens of the faid James Watfoun and James Hinchelwoid, come to the faid George Tuedeis bedheid, and thair maift crewallie gaif him tua grit ftraikis in his heid, and Murdreift him thairby; the faid James Hinchelwoid haifing brocht in the candill in his hand, and delyuering the mell to the faid James Hammiltoun, to commit the faid Murthour; AND eftir the committing thair of, the faid James Watfone, taking away with him the faid vmq^{le} George Tuedeis horfe, with the fadill and brydill, and the faid James Hinchelwoid helping the faid James Hammiltoun to beir him to ane lyme hoill, ane littill frome the hous, quhair he wes bureit.

VERDICT. The Affyfe electit and choifit Hammiltoun of Sillertounhill² chancellor, reffonit and voittit vpone the poyntis of the faid Dittay, and being ryplie and at lenth advyfet thairwith, togidder with the faidis James Watfone and James Hinchelwoidis Depositiones made be thame in the premiffes; thay, be the mouth of the faid Chancellor, ffand, pronuncet and declairit the faidis James Watfone and James Hinchelwoid to be ffylet, culpable and convict of airt, pairt, red, counfal and foirknawlege of the faid abhominable Murthour, and conceilling of the famyn, fa lang eftir the committing thair of.

SENTENCE. To be tane to the Caftell-hill of Edinburgh, and thair to be hangit quhill thay be deid; and all thair moveabill guidis efcheit to our fouerane lordis vfe, as convict of the faidis crymes.

Cattle-stealing.

Mar. 11.—THOMAS FRAM, fumtyme fervand to James Hammiltoun of Spittelscheill.

Dilaitit of airt and pairt of the thiftious Steilling, conceilling, reffetting and

¹ Mallet. ² Robert Bailzie of Jerriftoun, Johnne Grahame brother to Waftraw, and James Mureheid younger of Lachope, are the only other landed persons. James Levingftoun of Jerifwoid was fined 100 merks for non-appearance.

away-taking of thre oxin and ane kow pertening to James, Lord of Balmirrinoch, furth of his landis of Mulrum; committit in the moneth of August I^m.Vj^c. and fax yeiris.—VERDICT. Guilty. James Levinstoun of Jeriswoid, chancellor.

SENTENCE. To be tane to the mercait croce of Edinburgh, and thair to be hangit quhill he be deid; and all his moveabill guidis, gif he ony hes, to be confiscat to our fouerane lordis vfe.

[*Mr Williame Borthuik, Justice-Depute.*]

Murder.

Mar. 18.—JOHNNE SWAN, burges of Dumbar.

PERSEWERIS, Williame Clerkfoune, brother-fone, Johnne Kellie, sifter-fone, Johnne Learmonth, guid-fone, Williame Ruthven also fone-in-law.

Dilaitit of airt and pairt of the crewall Murthour and Slauchter of vmq^{le} George Clarkfoune, merchand burges of Dumbar; committit be him within the said vmq^{le} George awin barne, lyand at the bak of the toune of Dumbar, vpone the fyftene day of Marche instant, betuix thre and foure eftir none; be geving to him of ane crewall and deidlie straik vpone the left syde of his heid, alangis his vane-organe,¹ with ane grit fork, quhairof he immediatlie depairtit this lyfe.

VERDICT. Guilty. Johnne Kellie, elder in Dumbar, chancellor.

SENTENCE. To be takin to the mercait croce of Edinburgh, and thair his heid to be strukin frome his bodie; and all his moveabill guidis to be escheit and inbrocht to his hienes vfe, as culpable and convict of the said cryme.

[*Mr Williame Hairt, Justice-Depute.*]

Sorcerie, Witchcraft, &c.

Maij 27.—BEIGIS TOD, in Lang-Nydrie.

Dilaitit, accuset and persewit, at the instance of Mr Robert Foulis, Aduocat, substitute to our fouerane lordis Aduocat, of the crymes of Sorcerie following, viz. FORSAMEKILL as scho, accompaneit with vmq^{le} Cristiane Tod, hir sifter, Johnne Graymeill, Margaret Dwne and Ersche Marioun,² in the moneth of August, the yeir of God I^m.V^c. four scoir fourtene yeiris,³ convenit thame selffis, with thair complices, all Witches and abusearis of the people, at Deane-fute of Lang-Nydrie, quhair the Deuill appeirit to thame, and reprovit the said Beigis Tod verrie scherplie, for hir lang tayreing; to quhome scho maid this ansuer, 'Sir, I could wyn na soner!' And immediatlie thaireftir, thay past altogidder to the said Beigis hous in Lang-Nydrie; quhair, eftir thay had drukkin togidder a certane space, thay, in thair devillische maner, tuik ane katt, and drew the samyn nyne tymes throw the said Beigis cruik;⁴ and thaireftir come with all thair speid to

¹ Jugular vein.
that period.

² Irish or Highland Marion, a personage who figured in the Witch Trials of

³ A.D. 1594.

⁴ Of iron, on which the 'kail-pat' is usually hung over the fire.

Seaton-thorne,¹ be-north the 3et;² quhair the Devill callit for the said Cristiane Tod, and past to Robert Smartis hous, and brocht hir out; and as scho was cumand with him, scho tuik ane grit fray,³ and said to the Devill, 'Sir, quhat will ye do with me?' Quha anfuerit her, 'Tak na feir, for 3e fall gang to 3our sifter Beigis, and to be rest of hir companie, quha ar stayand vpone 3our cuming at the Thorne!' And thay theireftir past altogidder, with the Devill, to the irne 3et of Seatoun, quhair of new thay tuik ane cat, and drew the samyn nyne tymes throw the said Irne-3ett: And immediatlie thaireftir, come to the barne, foiranent George Feudaris dur,⁴ quhair thai cristenit the said catt, and callit hir *Margaret*: And thaireftir come all bak agane to the Deane-fute, quhair first thai convenit, and cuist the kat to the Devill. For the quhilkis devillische practizes the saidis Cristiane Tod, Johnne Gray-meill, Ersche Marioun and Margaret Dwne war convict and brunt. And the said Beigis Tod is airt and pairt of the cryme of Sorcerie and Witchcraft aboue writtin; quhilk wes nottourlie knawin: ITEM, fforfamekill as the said Beigis Tod, haifing fallin furth at variance with the vmq^{le} Alexander Fairlie in Lang-Nydrie, scho, to be revendget vpone him and his bairnis, in the moneth of Junij I^m.V^c.lxxxxj yeiris, be hir Sorcerie and Witchcraft, cuist ane heavie and vnknawin seiknes vpone Alexander Fairlie, his sone, quha vanischet away⁵ with vehement sueiting and continuall burning at the heart; quhilk seiknes indurit with him the space of tua monethis, that nane luikit for his lyfe;⁶ and nichtlie the said Beigis appeirit to him, in hir awin similitude; vpone quhome he cryit continuallie for help: And in the day, scho appeirit to him, in schape of a dog; quhilk pat him almaist out of his witts: Vpone occasioun quhairof, the said Alexander, his father, past to the said Beigis Tod, and efter he was reconceillit to hir, maist earnistlie besocht hir to cum and remedie his sone of the said seiknes; quha refuist to cum; yit, at the eirnest desyre of Archibald Galloway, scho, accompaneit with hir tua sones, come to the hous, and sa sone as the said Alexander saw hir, he eftir that tyme became bettir and bettir, and convalescit of the said seiknes. And sa, scho committit manifest devilrie and Witchcraft, in on-laying and aftalking of seiknes, in maner foirsaid. AND lykwayes, was accuset be the said Aduocat and Robert Woid, litster, for the casting of the lyk vncouth seiknes vpone the said Robert, be hir devilrie and Witchcraft, in the moneth of Nouember last.

VERDICT. The Assyse, all in ane voce, be the mouth of Daud Seatoun, bailzie of Tranent, ffylet the said Beigis of the first tua poyntis of Dittay aboue writtin: And, be pluralitie of voittis, ffland, pronuncet and declairit hir to be Clene

¹ Thorns were favourite trysting-places of witches as well as lovers.

gate. ³ Fright. Old Fr. *frayeur*.

⁴ Door.

⁵ Swooned, fainted away.

⁶ None

thought he could possibly survive.

and acquit of the Sorcerie and Witchcraft vset be hir aganis the said Robert Woid, in laying the said feiknes vpon him ; in maner specifeit in the Dittay.

SENTENCE. For the quhilkis tua crymes, quhair of she is convict, the Justice ordanit hir to be tane to the Castell-hill of Ed^r, and thair to be wirreit at ane staik, and her body to be brunt in asches ; and hir haill guidis to be escheit, &c.

[CURIA JUSTICIARIE *f. d. n. Regis, tenta in Pretorio de Lynlythgow, ultimo die Maij 1608, per M. Willielmum Hairt de Prestoun, Justiciarium Deputatum.*]

ASSESSOURIS TO THE JUSTICE.

My Lord of Balmirrienoche,¹ My Lord Abercorne,² My Lord Lynlythgow,³ Sir Peter Young.⁴

Abstracting Pearls and Jewels belonging to the Queen.

May 31.—MARGARET HERTSYDE, spous to Johnne Buchannane, sumtyme fervand to his Maiestie, and the said Johnne Buchannane, for his entreis.⁵

Dilaittit, accuset and persewit be Sir Thomas Hammiltoun of Bynnie, knycht, Aduocat to our fouerane lord.

DITTAY against the Pannell.

MARGARET HERTSYDE, 3e ar indyttit and accuset, fforfamekill as 3e, being many 3eiris in credeit and service with our fouerane lordis darrest spous, the Queinis Maiestie, and haifing ressaunt many grit benifeittis frome hir Maiestie, during pe tyme of 3our seruice, at dyuerse tymes, to 3our heich advancement, baith in credeit and welth : 3e, nochtwithstanding thair of, maist vnlauffullie and vndewtiefullie substractit, staw and detenit frome hir Maiestie, furth of our fouerane lordis Palices of in Ingland, at the leift furth of ane or vther of our saidis Palices, ane Perle, of the valour and pryce of ane hundreth and ten pund sterling, pertening to hir Maiestie ; togidder with dyuerse vtheris perles, precious stanes, jowallis and goldfmyth wark, lykwayis pertening to his Maiesteis darrest spous, worth the fowme of thre hundreth pund sterling ; committit be 3ow in the monethis of, the 3earis of God I^m. sax hundreth thre, sax hundreth foure, sax hundreth fyve, sax hundreth sax, and I^m.Vj^e. and sevin 3eiris ; at pe leift in ane or vper of pe saidis monethis and 3eiris. For the quhilkis, 3e being sworne and examinat, first vpon the fyft day of October 1607, and paireftir vpon the thrid day of Nouember lastbypast, anent 3our vnlauffull haifing of findrie of hir Maiesteis jowellis ; and haveing declairit, vpon 3our grit aithe, that 3e had nane, and gif it war fund that 3e had ony vther jowallis of worth, quhilkis pertenit to hir Maiestie, that pe perticuleris than confessit be 3ow, (quhairin the jowallis lybellit war nocht comprehendit,) 3e acknowlegit that 3e had thame nocht lauchfullie : And lykwayis declairit, be 3our said Deposition, that at 3our first cuming frome Court to Scotland, 3e had delyuerit to hir Maiestie all pe jowallis quhair of 3e had pe credeit,⁶ and nevir senfyne had charge of pame, or mellit⁷ with ony of thame. NOCHTWITHSTANDING quhair of, 3e paireftir, vpon the said thrid day of Nouember last, Confessit that 3e had abstractit frome hir Maiestie ane grit perle, pertening to her hienes, quhilk cam to 3our handis, amangis ane number of counterfute stanes, and many perles pairwith : Quhilk grit perle, 3e fauld, for ane hundreth and ten pund sterling, estir that 3e had presentit the same, hung at ane dyamond, to be fauld, to hir Maiesteis self ; ffor the quhilk 3e cravet her Maiesteis pardoun, and

¹ For his interest ; only as husband to the pannell.

² Sir James Elphinston, first Lord Balmerinoch, Lord President of the Court of Session. See his Trial, Mar. 10, 1609.

³ James Hamilton, first Earl of Abercorn.

⁴ Alexander, seventh Lord Levingston, was created Earl of Linlithgow Lord Levingston and Calendar.

⁵ His Majesty's ' Elimosinar' or Almoner, &c.

⁶ Trust, charge of.

⁷ Meddled, had to do with. Fr. *Meler*.

be 3our said Deposition cum in hir Maiesteis gracious Will for it. And lykwayis Confessit, be 3our Deposition foirfaid, that, without hir Maiesteis knowlege or gift, 3e had fauld and convenit to 3our awin proffeit and vse, vther precious stanes and perles, worth thre hundreth pund sterling, pertening to hir Maiestie; and acknowlegit pat 3our ouersicht and offence committit, in melling with the jowallis confessit be 3ow at pat tyme, pat 3ow in hir Maiesteis Will: And 3e ar airt and pairt of pe saidis crymes: ffor pe quhilkis 3e aucht and fould be pwneisched, conforme to pe lawis and daylie practik of 3our realme.

PERSEWAR, Mr Thomas Hammiltoun of Bynnie, knycht, Aduocat to our fouerane lord.

PRELOCUTOURIS for the pannell, Mr Williame Oliphant, Mr Thomas Hoip, Mr Alexander King, Mr Johnne Russell, Aduocatis, Mr Robert Buchannane, Minister at the Kirk of Ceres, Mr Williame Buchannane, Minister at Methven.

The Aduocat producet our fouerane lordis Letteris, deulie execute and indorfate, purchest at his instance, as Aduocat to our fouerane lord, for his hienes entreis. The Aduocat, eftir cheifing of the prelocutouris for the pannell, producet his Maiesteis Warrant to the Justice to proceed and minister Justice; togidder with ane vther Warrant, directit to my lord Aduocat, to infist in this persute.—Mr Johnne Russell, for him self and the rest of the prelocutouris, producet ane Warrant of the Lordis of Secreit Counfall, commanding thame to compeir, as prelocutouris, in defence of the pannell.

My lord Aduocat producet ane *Eik to the Dittay*, for cleiring thair of, and circumstances of the poyntis of Dittay contenit in the Letteris.

Margaret Hertfyde, *olim in carcere*, and now at libertie, producetane Letter, contening ane desyre, ane Reuocation and protestation, quhair of the tennour followis.

I, MARGARET HERTSYDE, acknowleging my long captiuitie, and that I haif bene seperat fra my husband, dyuerse tymes examinat and demandit vpone findrie wechtie matteris and articles, to the quhilkis I was forcet to ansuer, nocht being weill resolut, bot be pe contraire, being hevelie trubillit, be apprehensioun¹ of my husband, my self, wairding of our persones, and ceasing² vpone our haill guidis; my Depositionis nocht perfytlie knawin to me, and I being ane woman, *juris ignara*, nocht haifing sa guid memorie as is requisat in sic ane wechtie caus; I desyre that now, being ane frie persone, exhibit in Judgment,³ my Declaratioun and Deposition may be producet, to the effect that I may reduce my self to ane perfyte memorie; and, gif my Declaratioun be set down accoirding to pe treuth, I am content to abyde pairat; vtherwayis, in caice pair be any thing omittit or erroneousslie declairit, that I may be hard to correct my errour and eik⁴ pairto, quhatsoeuer is omittit: And in cais of non production of my said Declaratioun and Depositiones, to the effect foirfaid, I, be pir presentis, revoikis quhatsumeur Deposition maid by me, concerning the lybell and Dittay pairin contenit, and haill contentis pair of: And protestis, in caice pe said Deposition be producet, at ony time heireftir, in this Judgement, that pe samyn be oppinlie red in my presence, to the effect foirfaid.

The Pannell, vpone productione of the Eik to the Aduocat, desyrit this matter to continew to the morne, to be advysed thairupone. My Lord Aduocat declairis, that he vffis this Eik producet, as ane qualificatioun and explanatioun of the Summondis; bot intendis nocht thairby to challenge the persewar of ony new cryme; and thairfoir desyrit present proces.

¹ Imprisonment.

² Seizing.

³ Presented in Court.

⁴ Add, subjoin.

THE JUSTICE and ASSESSOURIS continewis this mater to the morne, at viij houris; and hes delyuerit the Eik producet to the Prelocutouris, to he advyset thairupoun.

OBJECTIONS *against the Assessors.*

(Jun. 1.)—It is allegit aganis *Sir Peter Young*, that he can nocht be Assesfour in this cause, becaus he is his Maiesteis domestik seruitour; and Margaret Hertfyde being callit in this Judgement for steilling and substracting of Jowellis pertening to hir Maieftie, quhilk also pertenis to his Maieftie, na domestik seruitour to his Maieftie can be Judge or Assesfour in this cause.—To the quhilk it is anfuerit, be the Aduocat, the allegiance is nocht relevant; becaus it hes bene practikket¹ in this Judgement, ofbefoir, that his Maiesteis servandis and domestikis hes bene admittit vpon Assyses: speciallie, the practik of Barbara Naper² and Mr Thomas Cranstoun and George Craigengelt.³

It is allegit aganis *my Lord of Lynlythgow*, that he can nocht be Assesfour, becaus his Lordschipis spous and the Kingis Maieftie ar of kyn.⁴—It is anfuerit be my lord Aduocat, the rekning was nocht relevant, becaus kyn to the King makis nane suspect, in his caus.—It is allegit aganis *my Lord Balmirrienoch*, that he can nocht be Assesfour, becaus the Aduocat being persewar, be direction of the Quenis Maieftie, that the Aduocattis spous and my Lord President ar ferds of kyn; and sa can nocht be Assesfour.—To the quhilk it is anfuerit, the allegiance is nocht relevant; and thairfoir mereitis na anfuer.

THE Justice, be Interlocutour, finds that the noble men nominat Assesfouris may fit as Assesfouris in this cause, nochtwithstanding of the allegiances proponit be the pannell in the contrair. Quhairupone the Aduocat askit instrumentis.

My lord Aduocat declairit, that he infistit nocht aganis Johnne Buchannane, bot allanerlie as spous to Margaret (Hertfyde) for his entreis; quhairupone Johnne Buchannane askit instrumentis.—The pannell acceptis the Summondis and Dittay contenit thairin, as the samyn is qualifeit.

It is allegit be the pannell, that the Summondis is blank, bayth in the tyme and place of the committing of the fact lybellit; quhilk man be fillit befoir forder proces. It is anfuerit be the Aduocat, that the pannell man say, quhairin the blankis ar prejudiciall to thair defenffis.—It is duplyit, that the exceptioun standis relevant, nochtwithstanding of the anfuer maid thairto, in respect that of the Law Ciuill thair is a solempne forme prescryuit anent accusationis, that thairin tyme and place fall be determinat; *quia non oportet in Criminibus vagari: Lege libellorum § de accusationibus, &c. significasti, extra de libelli oblatione.* Bald. Confilio, 1420, vol. iv. Julius Clarus, paragrapho finali, questione

¹ Decided, made matter of pratique (practice) or precedent.

² Witchcraft.

³ Gowrie

Conspiracy. See Aug. 22, 1600.

⁴ Alexander, seventh Lord Levingstoun, married Lady Helenor Hay, only daughter of Andrew, seventh Earl of Errol. They were entrusted with the care and education of the Royal children.

xij. *Speculator*, in titulo *de furtis*, numero 2. Quhilkis folemniteis ar vniuersallie obseruit, bayth in Scotland, and in the haill warld. And forder, thair is ane grit necessitie to condiscend vpone the speciall moneth, becaus the Dittay beiris, anno 1603; and it is nottour, that in dyuerse monethis of the said yeir, hir Maieftie was resident in Scotland, albeit the Dittay beir the place to be, 'out of his Maiefties Palaces in Ingland.'—It is anfuerit be my lord Aduocat, that I haif alreddie declairit the Crymes lybellit to haif bene committit sen (*since*) the passing to Ingland, furth of some of his Maiefties Palaces thair; quhairby the Summondis is speciall aneuch, vnles the pannell wald allege, quhat particuler tyme and place wald mak the fact lybellit lauchfull.—It is anfuerit, that my lord Aduocattis declaratioun is mair generall nor the lybell; and of the law, *debet prius constare de delicto*, &c., quhilk man be circumscryit, *tempore et loco definito*. This Julius Clarus, libro v. Sententiarum—finali questione, iv. et v.

SECUNDO, it is allegit that thai woirdis of the Dittay, 'subscryuit and detenit,' ar nocht relevant, *et non sunt verba juris*, to infer a cryme.—It is anfuerit, that the Lybell standis relevant, as it is confauet.¹

TERTIO, it is allegit, that the last pairt of the Dittay, anent the generall woirdis of 'perles, pretious stanes and goldsmyth-wark,' is nocht relevant, becaus the perticuler number is nocht designet, and qualitie thair of; becaus of the Law, *in furto rerum plurium, designandus est numerus; quia, sine designatione numeri, non possunt res intellegi, vbi sunt plures*. L. *in actione furti, § de ffurtis*. In *auro infecto pondus in facto et signato numerus et intestie color dicendus est*. And the expres text of the same matter, in L. *si quis uxori, § si linea margaritarum surrepta est, dicendus est numerus, et non satis est res surreptus demonstrari per estimationem*: With this woird, that vpone ane generall clause, *neque in Ciuili neque in Criminali*, na proces can be grantit.—It is anfuerit be my Lord Aduocat, that the conclusioun of the argument is, that gif he fra quhome ane chenze, or perles, or ane Jowell composet of mony stanes is stown, can nocht condiscend vpone the particuler number thair of, the theif fall bruik the samyn, but remeid² of Law; quhair of I refer the relevancie and consequences to the Justice and Assesouris.—The pannell repeittis the exceptiones, quhilk is foundit vpone the Law; and as to my lord Aduocatis anfuer, it meitis nawayis; becaus the samyn speikis *de corpore vnito et de gemmis inclusis in vno auro*, and the exceptionioun oppingis directlie the lybell; becaus it condiscendis nocht vpone the stanes, Jowellis and goldsmyth-wark, quhilk ar bayth *distincta corpora, numero et specie*, mony of thame and of dyuerse natures. To the quhilk is maid na anfuer.

QUARTO, it is allegit, that, feing the Dittay is foundit and makis expres relation to certane Depositiones, allegit maid be the pannell, at tua feuerall tymes, in

¹ Conceived, framed.

² Without legal remedy or redress.

October and November, thairfoir my lord Aduocat, of all reffone, aucht to produce the faidis Depositiones, nocht only to the effect that the pannell and hir prelocutouris may confidder thame, for the caufe contenit in hir firft Proteftation, bot alfo, to the effect fcho and thay may be hard to reffone befor the Judge, anent the conformitie and difconformitie of the faidis Depositionis and with the Dittay; quhilk man be confidderit and tryit be the Judge; feing the famyn confiftis *in jure*: And gif this be nocht done, thair will follow ane grit inconvenient, to wit, that the Affyfe, gif this matter fall pas to thair knowlege, fall be forcet to reffone and difcufs vpon the faid conformitie and difconformitie, quhilk is nocht proper to thame, the famyn being *juris et non facti*.—It is anfuerit be my Lord Aduocat, that vnles ather the pannell, be thair confent, or the Juftice, be his Interlocutour, will find the Summondis relevant, he can nocht be aftrictit to produce his probatioun.

QUINTO, it is allegit, that the Dittay is nawayis relevant, fetting down only generallie that the perles, alleget fubftractit, pertenis to the Quenis Maieftie, and nawayis condifcending in quhais poffeffioun thai war, the tyme of the allegit fubftracting thairof; quhilk man be condifcendit; for gif thai war nocht in the Quenis Maiefteis poffeffioun, than the pannell could nocht commit Thift, in mell-ing¹ thairwith; for of the Law, in Lege prima, § *fi qui testamento liber*, &c., it is faid, *quod furtum est tantum poffeffionis*: And Baldus, Concilio 238, vol. ii., fayis, *quod proprietatem nemo alteri subtrahere potest*, &c.; and gif thai wer in the pannellis poffeffioun, fcho could nocht commit Thift be difponing thairvpone, Lege, *qui vas*, § *qui voluntate*, ff. de ffurtis, *qui ex voluntate domini servum recepit, qui neque fur neque plagiarius fit, plusquam manifestum est; quis enim voluntate domini habens fur dici potest*, &c.—Anfueris my lord Aduocat, the exceptione aucht to be repellit, in respect of the lybell, vnles the pannell will allege and instantlie verifie, that fcho obtenit lauchfull poffeffioun of the guidis lybellit, and had hir Maiefteis confent and allowance to the alienatioun thairof, quhilk is nevir fubfomit.—It is duplyit, that na pairtie, of the Law, can be compellit to propone, be peremptour (defence), or verifie the famyn, except the Dittay be ffund relevant: And forder, allegis, that gif my lord Aduocat will produce the Depofitioun, quhairupone his lybell is foundit, the famyn Depofitionis will verifie, that the perles lybellit cam in the pannellis hand lauchfullie.

SEXTO, the pannell acceptis the fummondis and Dittay thairin contenit, specialle that pairt thairof, beirand, that the faid Margaret was mony yeiris in credeit and fervice with hir Maieftie, and hath reffaut many grit benefeitis from hir Maieftie, the tyme of hir fervice, at dyuerfe tymes, to hir heiche advancement, baith in credeit and welth; and that the faid Margaret vndewtifullie and

¹ Meddling, intromitting. Fr. *meler*.

vnnaturallie, at the tyme lybellit, ftaw, &c. : And allegis, that the Summondis is nawayis relevant aganis the said Margaret, being ane woman of credeit, as is confest ; lyk as, it is nottour to the Judges and Affefouris, that scho was ane fervand of credeit, at the tyme lybellit, befoir, and dyueris yeiris thaireftir ; fua, of neceffitie, in respect of hir credeit, the maner and forme of the fteilling of the ftanes and perles lybellit man be condiscendit vpone, viz., quhidder the famyn was committit be force and violence, be breking vp of the durris of the houffis, and lokis of the cofferis, quhair the famyn war ; or was done privelie, in the nycht, be taking the famyn af hir Maieftis garmentis, or fra hir hienes jowellis, or out of hir hienes cabinettis ; or that scho, vpone the confcience of the said cryme, fled furth of hir Maieftis seruice, and transportit the famyn with hir ; quhilk may be condiscendit vpone, of all neceffitie ; becaus ther can nocht Thift be committit, be ane fervand of credeit, except the saidis qualiteis concur, to manifest violence *et animum furandi* in the seruand ; *quia, de jure, furtum sine affectio furandi fieri non potest* L. 1. ff. de ffurtis et *ut ait* Bart. ad L. 5, is qui rem § si tu Titium ff. de ffurtis. *ffurtum est nomen juris, hoc est, non omnis contrectatio rei aliene est ffurtum, nisi accedat dolofus animus furandi* L. Potest. et L. furtum ff. de vfu, &c.¹—It is anfuerit to the *fact* exceptioun, be my lord Aduocat, that, nochtwithftanding thair of, the Summondis is relevant, becaus the qualitie of the defender is nocht ane occafione to extenuat the cryme, bot to aggravat the famyn, feing the gritter credeit scho had, scho fould the mair faythfullie difcharget the famyn : And it is expreflie lybellit, that it was fa far fra the Quenis knowlege or consent, that the pannell fould haif convertit ony of thir jowellis to hir awin vfe, (in quhilk caice na policie neidit to haif bene vset) gif hir Maieftis consent had bene had thairto, that the pannell, to mak hir Maieftie to miiken hir awin grit perle, caufit hing the famyn to ane dyamont, and offerit to fell the famyn to hir Maieftie, as ane jewell nocht pertening to hir felf. Forder, the perfewar acceptis the instance proponit be the defender, anent ane fcheip-herd fteilland his maifteris fcheip, for the quhilk he may nocht be perfewit Criminallie ; quhairin the perfewar is direct contrar to the defendar, and affirmes, that of the law and cownone practik of the cuntrie, fcheip-hirdis fteilling fcheip, committit to thair keiping be thair maifter, is ordinarlie hangit thairfoir : Lyk as, Daud Forrefter greve to my Lord of Menmuir, and Robert Loch, his fervand, being accuset for fteilling fra him of aittis, beir, woll and lynning clayth, the summondis was ffund relevant, albeit the greve had charge of all theis thingis, be his office, and had his maifteris credeit ; and being put to ane Affyfe, was convict for the maift pairt thair of : Quhairby, it is manifest, that fervandis put in truft and credeit be thair maifter, and fteilling ony pairt of the geir,

¹ Here a number of sentences abridged from the Doctors follow.

quhairof thay haif the keiping and credeit, ar ordinarlie put to the knowlege of ane Affyse, and convict, gif thai be ffund giltie: And quhair, it is exceptit, that in thift committit be ane fervand of credeit (forceing?¹) of duris or kiftis is requisit, the persewar affirmes to be ane absurd allegiance.—It is anfuerit (replied), that the pannell, in hir last and saxt exceptioun, querrellis only the irrelevancie of the Dittay, and nawayis meanis to extenuat ane cryme committit be ane fervand; for gif it be certane and tryit that ane fervand hes committit ane cryme, he is maist worthie of double pwneischment, bot the thing that the pannell contendis for in the exceptioun, is, that na Dittay for Thift can be relevant aganis ane fervand of credeit, except sic qualities and actiones be contenit, quhilk may infer *animum furandi*; and the instances proponit be my lord Aduocat beiris, that fervandis committand crymes and ffund culpable war justifeit;² quhilk nawayis meittis the said exceptioun.—It is declairit be my lord Aduocat, for eschewing of disputatione vnnecessar, that he infistis only vpone tua poyntis of Dittay; to wit, the steilling, &c. the grit perle of the pryce of an hundreth and x li. sterling, for the first article; and the vther jowellis, perles, ftanes and goldsmythwark, for the secund poynt of Dittay: And vffis the haill rest of the lybell, nocht as ane feuerall³ cryme, bot only for explanatioun and qualificatioun thairof; and intendis nocht, at this tyme, to accuse the pannell of contrair⁴ Depositiones.

THE JUSTICE, with advyse of his Affesouris, ffindis the lybell and Dittay relevant; nochtwithstanding of the haill exceptionis proponit be the pannell.

Quhairvpone my lord Aduocat askit instrumentis.

It is allegit, peremptourlie, be the pannell, that this Dittay can nocht be put to ane Affyse; becaus of the law, ane fervand of credeit haifing the custodie of his Maiesteis guidis, being willing to rander ane compt of his intromiffioun, nevir haifing committit ony violent deid, can nocht be accuset of Thift; the intromiffioun, fra the begynning, being lauchfull: Bot trew it is, that Margaret Hertfyde, as is confest in the lybell, bothe the yeiris lybellit and dyuerse yeiris of befoir, was, lyke as scho is presentlie, hir Maiesteis fervand, vndischarget, with credeit, and willing to gif compt of hir intromiffioun, nevir haifing committit ony violent deid.—My lord Aduocat, of his awin motiue, nocht being inducet be my Lord Justice, bot at the pannellis desyre, producet the Depositiones, quhairupoun the Dittay is foundit; quhilk he vffis, at this tyme, for verifeing thairof; vnder Protestatioun, that this be na preparatiue in this Judgement,⁵ at ony tyme heir-estir: And thairupoune askit instrumentis; and that this is the only Depositione that he vffis at this tyme. Quhairvpone the pannell also askit instrumentis.—My lord Aduocat allegit that the Depositione producet, man⁶ mak full

¹ Obliterated.

² Punished with death. L. B. *justificare*.

³ Separate or distinct.

⁴ Contradictory.

⁵ That this be no precedent in this Court,

⁶ Must.

faith, and is valid, of the law, notwithstanding of the Reuocation maid and ingrossit yisterday in proces, be the defender; becaus na Deposition is revocable, of the Law, quhilkis ar maid voluntarlie, in presens of thame that hes power to examine the pairtie, without ony tortour or feir of tortour. And trew it is, that this Depositione producet, was maid lauchfullie and voluntarlie, and thairfoir is nocht reuocable. Julius Clarus, L. quinto, § finali, questione 55, etq. 65, versaculo, *sed quero*: And in respect thairof, desyres the reuocatione producet to be reiectit, and the protestation refusit.

It is allegit, that the pannell can nocht be put to knowlege of ane Assyse for hir intromission and melling with the perles and jowellis lybellit; becaus it is set doun and confest in the Deposition producet be my lord Aduocat, that the saidis jowellis and perles war gevin be the Quenis Maiestie to the defender, for the vse thairin contenit; quhilk vse was accomplisched and perfyttit to hir Maiesteis contentment; and as to the residu, the defender, supponing that hir Maiestie fould nevir re-demand the samyn, scho disponit thairupoun, quhilk can nawayis be comptit nor estemit ane cryme of Thift, of the Law: first, becaus the saidis jowellis and perles cam, fra the begynning, lauchfullie to the defenderis possessione, and sua scho could nevir commit Thift, be disponing thairupoun. *Lege, qui vas, § qui voluntate, ff. de furtis, &c. Lege, qui re ff. de eod. titulo, qui re sibi commodata vel apud se deposita, usus est non committit furtum, precipue si putavit dominum consensurum; ut Cuiacius, ad Legem, si furem, ff. de pro emptore non omnis rem alienans fur dici potest, sed initium possessionis respiciendum est, et si initium possessionis justum fuit, furtum fieri non potest.* Nixt, the Confession, contenit in the Deposition, can nocht be ane cryme; becaus *furtum non potest fieri sine affectu furandi*; and the pannell had nocht *affectum furandi*; becaus the Deposition beris, scho supponit hir Maiestie fould nocht re-demand thame: And in this caice, that Thift can nocht be committit, of the Law it is provin; § *placuit de institutionibus, &c.*¹ And this aggreis verrie weill with the Deposition, quhilk, in effect, meanis that hir Maiestie had forjet² the samyn, and had thame *pro derelictis*; sua that the said Deposition previs the Defenderis exception and everie member thairof: Quhilk Deposition my lord Aduocat can nawayis be hard to devyd; seing, of the Law, *vbi actus est legitimus in se, nunquam presumitur delictum, nisi probetur.* And to excuse the committer, *sola negligentia sufficit credulitas, immo temeritas.* Gothophredus, § *placuit.* Alexander, vol. iv. Phelinus, cap. *sicut noxius. ac delicti extra de accusationibus.* Baldus, Confilio 98, vol. v, &c.— And gifand³ that qualitie anent hir credulitie war nocht insert in hir Deposi-

¹ Various other clauses are here shortly, but very obscurely and hastily cited.

² Forgotten.

³ Granting, allowing for the sake of argument.

tiounes, yit of the law, quhair the possessioun cumis lauchfullie to ony perfonis handis, be the will of the maister, gif ony questioun arryse anent the credulitie or opinioun of the pairtie, quhither he intervertit the possessioun *animo furandi*, of the law, the opinioun or credulitie is provin be the parteis ayth: This is decydit per Bartol. ad dictum 59 '*recte*,' quhair he disputis the said matter *ad longum*, on baith the sydis; and concludis, in end, that the parteis ayth shold be tane, cheiflie quhair the partie is abill to produce ony probable conjectouris or argumentis, to cleir hir mynd and intentioun; and quhair hir accuser is nocht able to produce ony probable conjectouris, to preve the contrair; and the coniectouris and presumptiones quhilk may infer *malam fidem in furto*, is set down in the Law, *in autentica, si vero de exhibendis reis*, Lege *si ffurtum*, ff. de Adulterijs; to wit, *si per vim, si clam, si aufugit, si persona male et suspecte fame*. Bot nane of thir conjectouris may be qualifeit aganis the pannell. Scho committit nather fraud nor violence: it was nocht committit be hir in the nycht; and the Deposition beiris the perle was fauld to George Heriot, hir Maiesteis principall Joweller; and gif thair had bene ane intentioun of Thift, in the pannellis mynd, it can nocht be presumet that scho wald haif fauld the samyn to the Jowaller quhom scho knew wald schaw the samyn agane to hir Maiestie: And it is constant,¹ that scho fled nocht away fra hir Maiestie; bot, be the space of dyuerse yeiris thaireftir, remanit in hir Maiesteis seruice, in grit fauour and credeit: And quhat was hir estimatioun, quhither scho was repute ane pyker² or steiller or no, remittis to the conscience and notorietie of the Judges. And as thair is na suspitioun of Thift aganis hir; sa, on the vther pairt, thair is mony vehement presumptiones to mak cleir the mynd and intentioun of the pannell, quhilk is nocht necessarlie to be writtin; bot referris the samyn to the Judges.

It is ansuerit be my lord Aduocat, that nochtwithstanding the haill incompatible memberis of the exceptioun, the Summondis standis relevant and cleirly verifeit be the Deposition producet; first, becaus the pannell had nevir lauchfull possessioun of the guidis lybellit, seing the possessioun of the seruand of the maisteris guidis, to the maisteris vse, is the maisteris possessioun; nixt, the vse pretendit be the defender, to wit, to imploy the jowallis delyuerit be hir Maiestie to hir; to wit, to busk babeis,³ was nocht performet be hir, becaus thai war nocht imployit to that vse; bot be the contrair, the babeis buskit and sent, and thir Jowallis lybellit, subtractit in maner lybellit; quhairin the pannell had nevir hir Maiesteis allowance or consent; and, of the Law, converting of stuf to vther vffis nor⁴ is commandit, is Thift, Lege 88 eod. titulo et Lege 82, *ffullo et sarcinator qui polienda et sarcienda vestimenta accepit, si forte his vtatur eo con-*

¹ Lat. *constat*.
(dolls) to the Princess.

² A committer of petty theft or *pickery*.

⁴ Than.

³ Deck, adorn, or dress babies

tractatione, eorum ffurtum fecisse videtur ; quia non ob eam causam ab eo videtur accepta. And quhair, the pannell wald excuse thame selfis *per animum et excusationem delinquentis*, that excuse is commone for all offenderis, and relevant for nane ; nather can the defender pretend simplicitie or guid intentioun, in respect of the fraud vset to caus hir Maiestie misknaw hir awin perle, be hinging it to ane dyamond, and presumptioun to offer it to be fauld to hir Maiesteis self ; and the Confessioun producet, beiring hir vnlauchfull intromissioun with this perle, and converting of it to hir awin privat vse, man be ane necessar caus of convictioun, *quia confessio probat contra confitentem, pro eo autem non probat.* Glossa in cap. finali in verb. *Confessio, verficulo, item, quod contra se ; et ibi post alios ; Abbas, numero 13, extra de confessis et confessio qualificata scindi potest et pro parte rejici :* Bartolus, in Lege, *eum qui ff. de jurejurando.* Julius Clarus, 51, finali questione 55 verficulo, *posset quoque reus ;* affirmeing, that ane Confessioun, contening the Dittay, and haifing adioint any qualitie that may releve the Defender, aucht to be ressauit aganis the proponer ; and the qualitie adiectit can nevir be respectit, vnles it be provin. Prosper Pharinacius, questione 81, numero 127, *quando quis a principio negavit delictum, et postea, vel timore probationum, vel ex quacunque alia causa, illud qualificate confessus est, tunc ratione doli qui presumitur ex precedenti mendatio et negatione, talis confessio scindi potest et pro parte acceptari, pro parte impugnari.* Et Boerius decisione 165 ; et Laurentius, in practica cautelarum, cap. 28, numero 7, *aiunt reum si qualitatem adiectam non probaverit, condemnari debere in penam ordinariam ;* quhilk is our direct caice ; seing the Depositioun producet beiris the Jowallis lybellit to haif bene hir Maiesteis, and fauld be the deponer, to hir awin privat vse, without hir Maiesteis knowlege or consent ; and the qualitie adiectit, of hir ressaueing of thame frome hir Maiestie to busk babeis, is nather relevant ; becaus scho convertit nocht thame to that vse, nor provin in ony way ; and thairfoir sould nocht be respectit ; speciallie, seing the deponaris Declaratioun, in hir awin fauouris, can nocht prove forder : And thairfoir, the Summondis is relevant, and is cleirly provin be the Depositioun.

It is anfuerit (replied), that the possessioun naturall of the perles lybellit, war in possessioun of the pannell ; and the possessioun-ciuill, quhilk hir Maiestie had, scho tynt and amittit it, be directing thame to the perticuler vse ; quhilk perticuler vse contenit in the Confessioun, was fulfillit to her Maiesteis contentment ; the intentioun of the partie being provin by her aith, accoirding to the Law, and assistit be probable conjectouris, is sufficient to cleir ony partie accuset, quhair the possessioun cam lauchfullie to hir handis. The Confessioun and Depositioun maid be the pannell can nocht be devydet, bot be the contrair, the samyn previs hir exceptioun cleirly. The lawis quhilk my lord Aduocat alledges, quhair

Confessio qualificata potest scindi, is only trew, quhair *Confessio facti in se est crimen, ut in Homicidio*; quhilk is the exampill, in the place of Julius Clarus, citit be my lord Aduocat; *sed Confessio non potest scindi*, of the Law, quhair the Confessioun of the deid, without the qualitie of ffelonie, is nocht a cryme; bot is only trew in his tyme, *sunt utroque jure prohibita et natura sua delicta*, cap. *circa delectionibus*. 6 cap. *si vero aliquis de sententia Excommunicationis*. Bartolus ad legem, *genero*. ff. *que notantur Infamia*; et ad legem *si cui § eisdem*. ff. *de Accusationibus*; et ad legem *si ex lege*. ff. *de Adulterijs*. Baldus, Confilio 1424, vol. v. cap. *estote misericordes*, &c. § *recte* et Bartolus, *ibi*. The coniectouris aganis the pannell, in respect of the offer maid to the Queen, is contrair to hir Deposition, for it was nocht scho, bot George Heriot quha offerit the samyn, eftir it (wes) fauld. The Lawis allegit be my lord Aduocat, *Lex fullo*, &c., it is anfuerit thay contene onlie *legem Communem*; and myne contenis *exceptionem*; and the perticuler caiffis of the Ciuill Law can nocht be obseruit with us, *quia variatur pena; nam in jure pena furti est dupli apud nos capitalis*.—My lord Aduocat repeitis the practikes concerning the shiphird, my lord of Menmuris grevis, and the Laird of Bonyngtones steilling of his fatheris euidentis; and protestit that he may haif ane speciall and direct anfuer to everie article that is proponit or writtin in the proces; speciallie anent Revocation, and the effect of the probatioun be this Depositione.

THE JUSTICE, with advyse of my Lordis Assesouris, findis, that in caice the pannell will nocht consent that the Reuocation of her Depositiones maid at Dunfermeling be delet, that the samyn falbe Repellit; in respect of my lord Aduocatis anfuer maid thairto. And also, with advyse foirfaid, Repellis the foirfaidis peremptour exceptiones proponit for the pannell; and Ordanit the Summondis and Dittay to be put to the knowlege of ane Assyse, to be verifeit, as accoordis of the Law.—Quhairupoun the Aduocat askit instrumentis.

It is allegit be the pannell, that it is lauchful to hir to revoik quhatfumeuir Depositionis maid be (hir) to hir preiudice: becaus the samyn war maid be hir *metus causa*, viz. *carceris metu*,—*et amissionis bonorum*,—*et metu amissionis vite*,—*et reuerentia Principis*,—and want of hir husband; and the Confessioun bindis nocht the confessor, except he perseveir thairin; per legem primam, *de Questionibus*.—The Aduocat, for anfuer, repeitis the Justice and Assesouris Interlocutour. [My Lord Chancellor declairis, that he fall mak his declaratioun to the Assyse, quhan he fall be inquyrit.¹]

¹ This is partially deleted. The uncommon nature of the Crime, and the interest of these pleadings, have induced the Editor to insert the entire arguments. The real cause of the Criminal prosecution of this servant of the Queen is understood to have originated in Mrs (afterwards *Lady*) Buchanan's being too deeply versed in certain Court intrigues; and it was deemed necessary to get rid of her, even in the face of the most strenuous remonstrances on the part of her Majesty.

ASSISA.

Sir Johnne Prestoun of Valafeild,	Harie Guidlet of Vphall,	Johnne Forbes of New,
James Somervell of Garidwoid,	Mr Moreis Drummond of Auch-	Jo ⁿ Scott, bailzie of Muffilburgh,
Johnne Hammiltoun of the	termuthill,	Thomas Esplene of Newbiging,
Grange of Kilmarnok,	Andro Boyde, brother to Kil-	Jo ⁿ Broune, bailzie of Muffilburgh,
Mathow Bailzie of Littilgill,	marnok,	David Dundas of Preiftinche,
Johnne Corbet of Ardbo,	Ro ^t Logie, bailzie of Quenis-ferie,	James Hammiltoune of Garene. ¹

The Aduocat repetis the Deposition produceit, and my Lord Justice Interloquutour, findand the haill Dittay relevant: And in respect thair of, and of hir becoming in will, in hir Depositiones, protestis for Wilfull Errour.

VERDICT. THE said perfon of ASSYSE, be the mouth of the said David Dundas, chancellor, all in ane voce, fand, pronuncet and declairit the said Margaret Hertfyde to be ffylit, culpable and convict of the vnlawfull and vndewtfull substracting and detening frome our fouerane lordis darrest spous, the Quenis Maiestie, furth of his hienes Palices of in Ingland, at the leift furth of ane or vther of the saidis Palices, of ane perle, of the valour of ane hundreth and ten pund sterling; togidder with dyuerse vtheris perles, precious stanes, jowellis and goldsmyth wark, lykwayis pertening to hir Maiestie, worth the fowme of thre hundreth pund sterling, or thairby; committit be the said Margaret, in the monethis of, the yeiris of God Im.Vj^c. thre, fax hundreth foure, fax hundreth fyve, fax hundreth fax and Im.Vj^c. and sewin yeiris, at the leift in ane or vther of the saidis monethis and yeiris: Lyk as, the saidis perfon of Affyse, be the mouth of the said Chancellor, for the maist pairt, fand, pronuncet and declairit the said Margaret Hartfyde to be Clanget of the steilling of the said perle, togidder with the remanent perles, precious stanes, jowallis and goldsmyth wark foirsaid. In witness quhair of, the chancellor of the said Affyse hes subscryuit the said delyuerance, with his hand.

(Sic subscribitur)

DAVID DUNDASS.

[*Apud Lynlythgow, Aug. 10, 1608. Mr Williame Hairt, Justice-Depute.*]

DOME contrair Margaret Hairtsyde.

Aug. 10.—The quhilk day, Margaret Heartfyde and Johnne Buchannane² hir spous, for his entreis allenerlie, being presentit vpone pannell, to heir his Maieftis will and plesour declairit aganis hir, as scho that was convict be ane Affyse, in ane Court of Justiciarie, haldin in the tolbuith of Lynlythgow, the first day of Junij lastbypast, &c. Compeirit Sir Thomas Hammiltoun of Bynnie, knyght, and producet his Maieftis Precept and Warrant, quhilk the Justice caufit to be publictlye red; quhair of the tennour followis.

JAMES R.

JUSTICE GENERALL, Justice Clerk, Clark and 3 our deputis, We greit 3ow weill. QUHAIR AS, Margaret Hairtsyde was, vpone hir awin Confessioun, convicted for pe vnlauchfull and vndewtfull abstracting and detening of certane jowellis belonging to our darrest bedfellow THE QUENE, and pairupoun remittit to prissone, till our further plesour sould be declairit concerning hir: WE haif thocht guid, be theis presentis, to signifie our said plesour to 3ow; quhich is, that 3e fall, with all convenient expeditioun, cause affix and fens³ ane ordinaire Justice Court, at our burgh of Lynlythgow; and pair, (scho and hir husband, for his entreis, being present,) it be declairit, that howfoenir the Affyse acquit

¹ 'Sir James Sandilandis of Slamanno' is deleted from the roll of Assise. ² 'John Buchanan and his wyffe, Margaret Hartesyde, that had laynn longe in prissone heire, for the alleget stealling some of the Queins Jewells (bot the Courtiers talked, that it was for reuelling some of the Queins secretts to the King, wich a wysse chalmbermaide wold not haue done,) was, by ane sentence, condemned to perpetuelle exyle, in the Iylandes of Orknay, and declared to be ane infamous persone, in Aguste this yeir' (1608).—*Sir J. Balfour's Annals*, II. 26. ³ Fence, hold.

hir of the cryme of Thift, 3it, in regaird that, vpone hir awin Confessioun, scho was fund giltye, as is afoirfaid; in that respect, We accompt hir fact alse infamous, as gif it had bene done be direct stelth: And that, seeing pair can be no difference betwene the vnlawfull medling with any thing belonging to the Quene, our darrest bedfellow, hir persone, and our awin, and lykwayis that pe exampill is most pernicious, and alluterlie intollerable, that any face or cullour sould be pute vpone pe coofening or abstracting frome aper of ws any pairt of our jowellis or moveabillis, by such as ar in trust, or haif pe keeping of thame, We most conclude, that scho hes delt so dishonestlie heirin, as We account her als worthie to be repute and declaired INFAMOUS,¹ (lyk as, it is our plesour that 3e declair hir to be so) as gif scho had bene directlie convict of Thift: 3e fall lykwayis declair, that it is our plesour, that scho fall with all expeditioun repay, out of the reddiest of hir and hir husbandis guidis, to Henrie Wardlaw, Chalmerlane to our darrest bedfellow the Quene, of hir Lordschip of Dunfermeling, the liquidat valew of thease jewallis, contenit in hir proces, to be convertit to siche vse as our said darrest bedfellow fall think convenient: And lastlie, 3e fall declair, that it is our plesour, that hir persone fall be, for hir said dishonest offence, confynit to pe YLES OF ORKNAY; thair to remane, and nocht exceid the boundis pairof, induring hir lyftyme; vnder all hiest pane and charge: QUHICH Dome being pronuncet, 3e fall cause hir be sachie convoyit bak to our Castell of Blaknes, pair to remane in sure firmance, till scho find guid and sufficient caution, alsweill for payment of the said sowme, contenit in hir proces, within fyftene dayis nixt eftir scho salbe charget for the same, as also for entrie of hir persone, in the place of hir confining, within fourtie dayis nixt eftir scho fall be fred out of our Castell of Blaknes: FOR Dome and performeing of everie of pe which premisses, thease presentis fall be vnto 3ow ane sufficient Warrant. GEVIN at our Mannour of THEOBALDIS, pe tuentie day of July, 1608.

Accoirding to the quhilk Warrant, the said Justice-depute, be the mouth of Henrie Wilfoun, dempster of Court, Declairit the said Margaret Hairtseyde to be INFAMOUS; And lykwayis declairit and decernit the said Margaret to repay, with all expeditioun, out of the reddiest of hir and hir husbandis guidis, to Henrie Wardlaw, Chalmerlane to our souerane lordis darrest bedfellow the Quene, of her lordschip of Dunfermeling, the sowme of foure hundreth pund Sterling money, extending, in Scottis money, to the sowme of foure thousand and aucht hundreth li., as the liquidat valew of thois Jowellis, contenit in hir proces, to be convertit to sic vse as hir Maiestie fall think convenient: And lastlie, decernit and ordanit that hir persone fall be, for hir said dishonest offence, confinet to the Iles of Orknay, thairin to remane and nocht exceid the boundis thairof, induring hir lyftyme; vnder all hiest pane and charge. Quhilk was pronuncet for Dome, &c.

Mr Johnne Dalzell, burges of Edinburgh, become caution and souertie for the saidis Margaret and hir spous, for his entreis; and they all, conjunctlie and feuerallie, Band and obleist thame to pay and delyuer to the said Henrie Wardlaw the said sowme; and that within fyftene dayis nixt eftir thay be charget to that effect. And sicklyk, the said Mr Johnne Dalzell become bundin and obleist, as cautioner and souertie for the said Margaret, that scho fall entir hir persone in the place foirfaid of hir confining, within fourtie dayis eftir the dait of thir presentis, (the morne, viz. the ellevint day of August instant, being comptit for the first day,) vnder the pane of Ten thousand merkis Scottis money, &c.

¹ (On the margin.) 'Thir woirdis of Infamie is ordanit to be delet, conforme to his Maiesteis expres Warrant, insert in the Register of Adiornall, pe xv of December, 1619.'

JAMES R.

JUSTICE GENERALL, Justice Clark and 3 our deputtis, We greit 3ow weill. Quhair as, our trustie and loyall seruitrix MARGARET HEARTSYDE, the spons of Sir Johnne Buchannane, kny^t, was, by the finisterous informatioun of certane hir vnfreindis for the tyme, persewit criminallie befoir 3ow; and being put to ane Affyse, was Acquit and affoilzeit of that speciall point of hir Indytment, which of the Law sustenit the samyn to be relevant to be tryit and cognosct be thame, and onlie was fund gilty of certain adminicles insert in hir Dittay, for qualificatioun of hir alledget cryme. Vpoun the whilk convictioun, doome and sentence, accoirding to our Warrant and Declaratioun pairintill, in ane Justice Court, haldin be 3ow, within our tolbuthe of Lynlythgow, vpone the tent of August, 1608, was gevin out against hir, Declairing hir to be Infamous. Quhilk doome and sentence being maist humlie and with grit patience and modestie imbracet and vnderlyne be hir, and hir behauour continuallye sensyne being verrie deutifull. THAIRFORE, and that the foirsaid Doome gevin out against hir may nocht be a precedent, nor haif force heireftir, It is our gracious Will and plesour, that the foirsaid Declaratioun of the said Margaret Heartsyde to be INFAMOUS, insert in hir proces, be haldin as deileit furth thair of; and on nawayis to be extractit or gevin out to ony persone or persones, in tyme cuming; bot that this our Warrant and Declaratioun be insert in our Registeris of Adiornall, for reponeing of hir to hir fame, aganist the samyn Sentence; Whilk We command 3ow to fie done. Sua, nothing douting of 3our cair and reddines heirintill, We bid 3ow hairtlye fairweill. ffrome our Courte, at Roystoun, the fyftenth day of Nouember, 1619.

Slaughter.

Jun. 21.—MR ALEXANDER INNES, sumtyme Minister at Birnay.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Agnes Leslie, relict of vmq^{le} Douglas, proveist of Elgyn, and of vmq^{le} Williame Hay, father-brother to Williame Hay of Mayne; committit vpone set purpois, prouisioun and foirthocht felony.

James Hay 3ounger of Mayne, as neir kynsman to vmq^{le} Williame Hay, his guidfchires brother, and Alexander Bischope of Murray, as sone to vmq^{le} Agnes Leslie, producet our fouerane lordis Letteris, deulie execute and indorsat at thair instance aganis Andro Meldrum, callit of Dumbrek,¹ as cautioner and fouertie for the entrie of Mr Alexander Innes, &c. and offerit thame felfis reddie to persew.

THE Justice ordanit the said Andro to be vnlawit in the pane of tua hundreth merkis, becaus the said Mr Alexander Innes was at the horne of befoir, and fugitiue for the saidis crymes: And siclyk, ordanit the said Mr Alexander, for his nocht compeirance, to be denuncit rebell and put to the horne; and all his moveable guidis to be escheit, &c.

[*Mr Alexander Coluill, Justice-Depute.*]

Treason, &c.

Jun. 22.—JOHNNE LORD MAXWALL.

Mr Williame Broun, ane of the clerkis in his Hienes Thesaurarie, producet our fouerane lordis Letteris, deulie execute and indorsate, vpone Johnne Lord

¹ ' Brother-germane to vmq^{le} . . . Meldrum, sumtyme of Dumbrek.'

Maxwall; be the quhilkis he hes past to the horne, for dyuerse treffonable crymes contenit thairin; and thairupoun askit instrumentis.¹

Slaughter.

Jun. 29.—SIR ROBERT GORDOUN of Lochinvar, knyght.

Dilaitit of the Slauchter of vmq^{le} James Gordoun, his padge.²

The Aduocat producet the Letteris raifit at his lordschipis instance, deulie execute and indorfate vpone the said Sir Robert, Johnne Gordoun of Airdis and Johnne Gordoun of Collindach, cautioneris, coniunctlie and feuerallie, for the entrie of the said Sir Robert, to vnderly the Law, for the crymes contenit in the Letteris.—Compeirit Mr Williame Oliphant, Mr Johnne Ruffell, and Mr Alexander King, Aduocattis, as procuratouris for Johnne Gordoun of gelftoun and Johnne Gordoun of Collindach, be thair Letteris of procuratorie Producet; and declairit na proces aganis thame, in respect of the Proclamatioune; and thairfoir, can nocht be vnlawit.—It is anfuerit be my lord Aduocat, that thair excuse can nocht be refflavit, becaufe thai ar nocht charget for thair awin personall compeirance, bot to enter the Laird of Lochinvar; quhilk lauchfullie mycht be done, thay being absent. *Secundo*, the Raid has nocht as yit tane effect, and the cautioneris and principall pairtie ar yit in thir pairtis.—It is anfuerit be the procuratouris for the cautioneris, *excusatorio nomine*, that thai ar nocht obleift to attend at Edinburgh vpone the Leutennent, bot only at Ilay, conforme to the Proclamatioun, as place appointit vpone the viij day of July, to pas fordward to the Raid; and thairfoir the Justice, in respect of the Proclamatioun, can nocht vnlaw the cautioneris.

THE Justice continewis his Interlocutour, vpone the saidis allegeances, to Setterday nixt, the secund of July.

Jul. 2.—Compeirit Johnne Belscheillis (Belches), aduocat, as procuratour for Sir Robert Gordoun of Lochinvar, knyght, and his cautioneris, and producet ane Warrant of the Counsell, subfcryuit be my lord Chancellor and my Lord of Dumbar, for deserting of this dyet: quhairof the tennour followis.

JUSTICE, Justice Clerk and your deputis, it is his Maiesteis Will and pleafour, that 3e desert pe dyet appointit for tryell of Sir Robert Gordoun of Lochinvar, knyght, for pe Slauchter of his padge: Ordinand alwayis the cautioneris, fand ofbefoir for his entrie, vpone xv dayis wairning, befoir 3ow, to vnderly the law for the said Slauchter, to stand. Quhairanent pir presentis fall be 3our Warrant. Subfcryuit with our hand, AT EDINBURGH, the second day of July, 1608.

(Sic subscibitur) AL. CANCELL. DUMBAR.

The quhilk dyet the Justice desertit; and ordanit the cautioneris to remaine caution, as ofbefoir. Quhairupoun Johnne Belsches askit instrumentis.

¹ See the Trials and proceedings against this remarkable person, and the Account of the singular escape of Lord Maxwell and Sir James Maconeill from the Castle of Edinburgh, &c. in a future Part of this Collection.

² Page.

[*Mr Williame Hairt, Justice-Depute.*]

Resisting the King's Guard — Treasonable Slaughter, &c.

Jul. 14.—NINIANE ELLOTE, sone to Williame Ellote of Fiddeltoun,

Williame Ellote, sone to vmqle Johnne Ellote of Burnegranes.¹

Dilaitit, accuset and persewit in the proud and contemptuous Resisting of his Maiesteis Guaird, and remanent crymes contenit in the Dittay following, viz.

FORSAMEKILL as, the saidis Niniane and Williame, being fugitiue fra dyuerse Justice Courtis, haldin be his hienes Commissiouneris, at Jedburgh and Dumfreis, for cowmone Thift, cowmone reffet of thift, outputing and inputting of thift, and for dyuerse perticuler Thiftis, Murthouris, Slauchteris and Oppressionis; as the Dittayis and actis, gevin out thairupoun, at lenth beiris: ffor the quhillkis crymis, thay reteirit thame self out of thair awin cuntrie, to the West cuntrie, to seruice, quhair thay remanit thir dyuerse yeiris bygane; quhill that laitlie, the Lordis of his Maiesteis Counfall, vnderstanding quhair thai wer, directit Sir Robert Hepburne of Alderstoun, knycht, Lieutennent to his Maiesteis Gaird, to tak and apprehend thame: Quha, vpone the tuelf day of July instant, accompaneit with vmqle Williame Bailzie and dyuerse vtheris of the Gaird, come to the oistler-hous² vpone the Laird of Watterheidis landis, quhair the saidis persones had reteirit thame selfis vnto, for the tyme: And haifing, in peceable maner, requyret thame to rander thame selfis to him and his companie, as haifing Commiffioun of the Lordis of Counfall to that effect: Nochtwithstanding quhair of, the said Niniane and Williame Ellotes, the said day, maist prouddlie and contemptioulle resistit the said Commiffioun, and in grit contempt of our fouerane lordis auctorite, schot furth of the said hous at the said Lieutennent and his companie, his hienes Commissiouneris in that pairt, and Gaird, to the number of tuentie schot of Hagbutis and Pistolettis; and thairwith schot and slew the said vmqle Williame Bailzie, being ane of his Maiesteis Gaird; and nawayis wald rander thame selfis, nor cum furth of the said hous, quhill, accoirding to the said Commiffioun,³ ffyre was raisit thairaboutis: Quhairthrow, to thair former wrangis and oppressionis, hes conioynet haynous and crewall Slauchter with hagbutis, and proud contempt of his Maiesteis auctoritie: And thay and ather of thame ar airt and pairt of the said crewall and presumptuous Slauchter, and of beiring, weiring, schuiting of pistolettis and hagbutis, and slaying the said vmqle Williame Bailzie thairwith; committit in maner and at the time foirsaid; in hie and proud contempt of his Maiesteis auctoritie and lawis.

ASSISA.

.... Carutheris of Howmaynes, Robert Power, burges of Edr, James Cranstoun, indueller in Edr,
Geo. Hereis, sumtyme of Effie, Thomas Hill, ane of the Gaird, Thomas Smyth, burges of Edr,
Johnne Trumbill, ane of the Gaird, Johnne Leyis, burges of Edr, Johnne Masoun, burges thair,
Thomas Moffett, wryter, James Haitlie, ane of the Gaird, Robert Cryftie, burges thair,
Thos Mow, br to the Laird of Mow, George Smyth, burges of Edr, R^t Stewart, bailzie of Lynlythgow.

The Aduocat protestis for Wilfull Errour, in cais thay Acquit. And askit instrumentis of the Leutenentis Declaratioun to the Assyse, concerning the Commiffioun gevin be the Counfall; and of the forme and maner, how the pannell resistit him and his companie, in the executioun thair of.

VERDICT. The Assyse, all in ane voce, be the mouth of the said Carutheris of Howmaynes, chancellor, ffand, pronuncet and declairit the said Niniane and

¹ They are, in another place, described thus,—‘Niniane Ellote, sone to vmqle Jok of Burgranes; Williame Ellote, sone to Will of Fiddeltoun.’ ² Hostler-house. Old Fr. *hostellerie*. ³ A Commission, containing warrant of ‘fire and sword.’

Williame Ellottis to be ffylet, culpabill and convict of airt and pairt of the Slauchter of the said vmq^{le} Williame Bailzie, and of beiring, weiring and schuiting of hagbutis and pistolettis, and of the contemptuous resisting of his Maiesteis Gaird, in maner specifeit in the said Dittay.—SENTENCE. For the quhilk cause, the said Justice-depute, be the mouth of Johnne Cheislle, dempster of Court, decernit and ordanit the saidis Niniane and Williame to be tane to the Castell-hill of Edinburghe; and first, thair richt handis to be strukin af thame, as culpable and convict of the beiring, weiring and schuiting of hagbutis and pistolettis, contrair to the Actis of Parliament; and thaireftir, to be hangit vpone ane gibbet, quhill thay be deid: And all thair moveabill guidis to be escheit and inbrocht to his Maiesteis vse, as convict of the Slauchter and remanent crymes aboue writtin: Quhilk was pronuncet for dome.

[*Mr Williame Hairt of Prestoun and Mr Alexander Coluill, Justices-Deputes.*]
Treasonable Murder, &c.

Jul. 15.—JOHNNE MURE elder (and James Mure Y^r) of Auchindrane.¹

Dilaitit of airt and pairt of the treffonabill Murthour and Slauchter of vmq^{le} Sir Thomas Kennydie of Culzeane, knycht, and Williame Caldwell (Dalrymple?)

PERSEWAR, Mr Robert Foulis, aduocat, substitute to our fouerane lordis Aduocat.

COMPEIRIT Gilbert Ross, Proveist of the College Kirk of Mayboill, seruitour to my Lord of Cassillis, and producet our fouerane Lordis Letteris, deulie execute and indorsate, the ane purchest be my Lord of Cassillis and his hienes Aduocat, for his Maiesteis entreis, aganis the Lairdis of Auchindrane elder and younger; and the vther Letter aganis the Lairdis of Bombie, Caldwell, and Young Langschaw, as cautioneris for the said James Mure younger of Auchindrane, for his entrie this day and place.

The Aduocat producet the Counfalls Warrant, direct to the Justice, for continuatioun of this dyet to the xxij day of November nixt; quhairof the tenour followis.

MY LORDIS OF SECREIT COUNSALL, vnto your lordschipis humlie meanis and schawis I, JOHNNE ERLE OF CASSILLIS, that quhair I haif raisit criminall Letteris aganis Johnne Mure of Auchindrane and James Mure his sone, for pair compeirance befor pe Justice or his deputis, vpone the xv day of July instant, to vnderly the Law, for pe Slauchter of vmq^{le} pe Laird of Culzeane and Murthour of Williame Dalrympill, and hes caufit summond ane Assyse to pat effect; bot in this meane tyme, pis expeditioun for pe Ilis hes intervenit, sua that naper may I compeir, to concur with his Maiesteis Aduocat in pis persute, nor 3it may the persones summond vpone pe Assyse compeir, bot ar vpone pair preparatione for pat seruice: And sua, seing pat pis delay proceidis nocht vpone ony occasioun of myne, bot vpone necessitie of his Maiesteis seruice, I maist humlie beseik your Lordschipis to gif command to pe Justice, (Justice) Clark and pair deputis, to continew pe said dyet to sum certane dyet, eftir pis seruice in pe Yles. And becaus pe cryme laid to pair charge is treffonabill, that the said Jus-

¹ See Jun. 23, 1602, Nov. 23, 1608, Jul. 1611, &c.

tice and Justice Clerk cause commit pe saidis perfonas to waird, in the Tolbuith of Edinburghe, pairin to remane, vpon pair awin expenssis, ay and quhill pe nixt dyet, to be appoyntit be 3 our lordschapis. And 3 our lordschapis anfuer humlie I befeik.—[*Followis the Lordis delyuerance.*]—APUD EDINBURGHE, xiiij July, 1608. THE Lordis of Secreit Counfall, Ordanis and commandis pe Justice, Justice Clerk and pair Deputis to continew pis dyet within writtin, to pe xxij day of November nixtocum : And to returne Auld Auchindrane bak agane to his waird, within the Tolbuith of pis burch of Edinburghe : And to caus 3oung Auchindrane caus his former cautioneris consent, of new, to enter him befor the Justice, pe foirfaid day, vnder the pane contenit in the former Act ; and failzieing pairof, that he find als sufficient caution, to pe contentment of pe Counsell, for pe same effect ; and in pe meane tyme, quhill pis caution be fund, pat he caus 3oung Auchindrane be committit to waird, within pe Tolbut of Edinburghe.

(Sic subscribitur) AL. CANCELL^r.

Mr Johnne Russell, prelocutour for Auld Auchindrane, and Auchindrane him self, Offeris him self to the tryell of the Law, for the crymes contenit in the Letteris ; disafenting to all continuatioun : And as to the Warrant producet, the samyn aucht nocht to be respectit, in respect it is purchest only be the pairtie. Compeirit Mr Johnne Russell, as prelocutour for the Lairdis of Bombie, Cauldwell and Young Langschaw, and allegit that thai can nocht enter James Mure, younger of Auchindrane, in respect of the Proclamatioun.—It is anfuerit be the Aduocat, for Auld Auchindrane, that, in respect of the Proclamatioun, the dyet man continew, conforme to the Counsellis Warrant : And as concerning Young Auchindrane, the cautioneris aucht to present him, or vtherwayis incur the vnlaw.

THE JUSTICE Ordanis the Auld Laird of Auchindrane to be committit to waird, conforme to the Counfallis Warrant. Quhairupoun the Aduocat askit instrumentis. And as concerning Young Auchindrane and his cautioneris, continewis this dyet, in the same forme, force and effect as it is now, to the xxij day of November nixtocum : and ordanis the cautioneris that day, to exhibeit the Young Laird of Auchindrane, vnder the panes contenit in the former Act : And Ordanis Letteris, gif neid beis, to be grantit to the pairtie persewar, for chargeing of the saidis cautioneris to enter him the said day.

Quhairupoun the said Gilbert Rofs askit instrumentis.

[*Mr Williame Hairt, Justice-Depute.*]

Cattle-stealing — Murder — Shooting of Pistolets, &c.

Aug. 12.—JAMES HAMMILTOUN of Spittelscheill.

Dilaitit, accuset and persewit, be James Lord of Balmirrenoch, President of the College of Justice, and Sir Thomas Hammiltoun, knyght, for his hienes interes, of the crymes following, viz.

FOR airt and part of the thiftious steilling, conceling, ressetting and away-taking of thre oxin and ane kow furth of the landis of Mulroun, pertening to the said James Lord of Balmirrenoch ; committit in the moneth of August, or thairby, the yeir of God 1^m.Vj^c. and sax yeiris. ITEM, for airt and part of the thiftious ressetting of ffyve oxin, within his landis of Spittelscheill, quhilk pertenit to Williame Flint in Breichmilne, and wer thiftioullie stollin furth of the landis of Breichmyll, in the moneth

of September lastbypast. ITEM, for airt and pairt of the thiftious Steilling, conceling, reffetting and away-taking of tuell hydis furth of ane barkhoill,¹ fra Cordiner, befyde Lauchop, committit in the moneth of . . . Im.Vj^e. . . . yeiris. ITEM, for airt and pairt of the crewall Murthour of vmq^{le} George Tuedie, within the said James Hammiltounis barne, in Spittelscheill: committit vpoun Sanct Leonardis ewin lastwas. ITEM, for contravening of oure fouerane lordis Actis of Parliament, in beir- ing, weiring and schuitting of pistolettis; and speciallie, for schuitting ane pistolett att Lokart of Ley, in the taking of yow; committit in the moneth of July lastbypast. ITEM, ffor commoun Thift, commoun Reffett of thift, inputting and outputting of thift, fra land to land, fra countrey to countrey.

ASSISA.

Mr Patrik Lyndfay, indueller in Ed^r, Mr Johnne Methven of Barnfeild, James Bailzie of Hillis, Johnne Weir, feruand to my lord Angus, Sir Robert Scott of Thirlstane.²

VERDICT. The Affyse, be the mouth of the said Johnne Weir, chancellor, ffand, pronunceit and declarit the said James Hammiltoun to be ffylit, culpabill and convict of the haill crymes and poyntis of Dittay.—SENTENCE. To be tane to the Castel-hill of Edinburghe, and thair his heid to be strikin fra his body; and all his landis, heritageis, takis, &c. to be fforfaltit and inbrocht to our fove- rane lordis vse, as convict of the saidis crymes. Quhilk wes gewin for dome.

[CURIA JUSTICIARIE, tenta in Pretorio burgi de Ed^r per Magistros Olivarium Colt juniozem et Da- uidem Prymrois, Aduocatos, Justiciarios Deputatos, per Commissionem Dominorum Secreti Consilij.]

Slaughter.

Sep. 29.—WILLIAME NISBET in Newtonleyis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} Gilbert Wauchope in Goddif- croft; committit be him and vmq^{le} Thomas Richiesoune in Cokburnespeth- scheillis, in the moneth of August lastbypast.

Compeirit Sir Thomas Hammiltoun of Bynnie, knycht, aduocat to our foue- rane lord, for his hienes entreis, and producet ane Commiffioun, grantit be the Lordis of Secreit Counfall; quhairof the tennour followis.

MY LORDIS of Secreit Counfall, vnto 3 our Lordschipis huimlie menis² and schawis 3 our lordschipis puir oratrice, Marioun Heislop, the relict of vmq^{le} Gylbert Wauchop in Godiscroft, Williame Wau- chope of Stoddinleuch, broper to pe said vmq^{le} Gylbert. That quhair, vpone pe . . . day of . . . , being ane Sondag, the said vmq^{le} Gylbert wes crewallie and schamefullie Mordreift, vnder fylence and cloud of nycht, haifing naper sword, quhingar nor na vper kynd of wapponis to defend him selff, be Williame Nisbett in Newtounleis and his compliceis, vpon deliberat purpois and foirthocht fellonie: Lykeas, the said Williame being, be his Maiesteis Gaird, tane and apprehendit, with reid-hand, within xxiiij houris eftir pe deceis of pe said vmq^{le} Gylbert, was, be 3 our lordschipis ordinance, putt to libertie; he finding caution that he sould compeir pis day, befor pe Justice, and vnderly pe law for pe said crewall Murthour: To pe quhilk he wes of befor summond, and pat vnder pe payne of thre thowfsand merkis, the ane haif pairof to his Maiestie and pe vper half to pe pairtie grewit; quha, conforme to 3 our lordschipis said ordinance, fand caution to pat effect: And We, being now maist willing to fol- low out the ordour of law aganis the said Williame, and to pat effect hes summond ane sufficient num- ber of honest men for ane Affyse, the said Williame and his said cautioneris, taking occasioun of his Maiesteis Justice absence furth of pe realme, labouris, be all meanis possible, contrair to all law and

¹ Tan-pit.² The remainder of the Assise, burgesses.³ Complains; literally, *moans*.

reasoun, to elude the course and ordour of Justice, and to haif aper the said dyett desert, that he and his cautioneris may be fred of 3our lordschipis ordinance, and frustrat ws of all the effect of our just persuit; or the mater to be continewit, to wearie bayth the persewaris and pe Affyse, except 3our Lordschipis, quha sufferit him to be fred vpoun caution, haifing committit so haynous and recent Murthour, provyde remeid, be 3our lordschipis Act and ordinance, be estableissing, in absence of pe Justice ordiner, sum vper Judge, be Commissioun, for ministrating justice in pe said caus and persute, or be vper convenient ordour, as best pleissis 3our lordschipis. HEIRFOIR We most huimblie beseik 3our honorable lordschipis, quha is the only mantenaris of justice and chastiezaris of sic haynous enormeteis within pis land, in his Maiesteis absence, to constitute certane Judge or Judgeis, be Commissioun, coniunctlie and feuerallie, viz. Mr Olipher Colt, 3ounger, Mr James Sandielandis, Mr David Prymrose, to hauld Justice Court and ministrat Justice in pe said persute, that throw inlaik thair of the cours of law and justice may nocht be eludit and frustrat; and We that hes our blude spilt and tane, be nocht disappointit of pe ordiner cours of Law and justice, and 3our lordschipis ordinance of finding of Caution be nocht ineffectuall. Accoirding to Justice; and 3our lordschipis ansuer maist huimblie we beseik.

[*Sic deliberatur.*] APUD ED^R, xxix Septembris, 1608.—FIAT Commissio vt petitur. And the Lordis Ordanis the Judgeis within writtin, to hauld Court this day, in pe mater within writtin.

(Sic subscribitur) AL. CANCELLARIUS. LOWTHIANE. ABIRCORNE. JO. PRESTOUNE.

[*Sic notatur infra.*] APUD ED^R, xxix Septembris, 1608.—The quhilk day, in presens of the lordis of Secreit Counfall, compeirit, personallie, Mr Olipher Colt, younger, and Mr David Prymrose, Aduocattis, and gaif thair aith for doing of Justice, faithfullie and vprychtlie, in the mater within writtin; as thay will ansuer to God.

J. PRYMROSE.¹

Philp Nisbet of that Ilk and George Lyell, ffar of Stanypeth, vnlawit in the panes of tua thowseand pundis, for nocht entrie of the said Williame, &c.

Williame Nisbet ordanit to be denuncet his hienes rebell, &c.

[*Mr Alexander Coluill, Justice-Depute.*]

Slaughter.

NOV. 9.—ALEXANDER TULLOCHE, appeirand of Tannacheis, &c.
Johnne Dumbar of Moynes, cautioner for repoirting of the Letteris, purchest at the instance of Normand Torrie and remanent bairnes² of vmq^{le} James Torrie, sumtyme in Logiehauch, aganis *Alexander Tulloche, appeirand of Tannacheis, James Tulloche*, his brother, *Williame Cuik*, in Forrefts, *Rorie Mccoilziechar-char*, alias *Rorie Buffache*, in Mordant, and *Donald Mclauchlane* thair, that thai fould compeir befor the Justice or his depute this day and place, in the hour of caus, to haif vnderlyne the Law, for the Slauchter of the said vmq^{le} James Torrie and vmq^{le} Agnes Douglas, his spouse, &c.

Compeirit Mr Johnne Dempster, Aduocat, as procuratour for Johnne Dumbar, quha become cautioner for repoirting of the saidis Letteris; and allegit, that, nochtwithstanding of the nocht repoirting of the saidis Letteris, deulie execute and indorsat, this day and place, conforme to the Act, that the said Johnne Dumbar, as

¹ Clerk of the Privy Council.

² Alexander, Walter and Robert.

cautioner, fould nocht be vnlawit; becaus it is of veritie, that the faidis Letteris, being delyuerit to James Dumbar, Messinger (at arms), to haif charget the defenderis thairin contenit, to haif fund cautione to haif vnderlyne the Law for the crymes thairin contenit, the fyftene dayis being bypast, within the quhilk the Defenderis fould haif fund caution; Alexander Tulloch, ane of the principall defenderis, being joynit in marriage with Iffobell Dumbar, mother to Alexander Dumbar, scheref of Murray, and principall of the cuntrie quhair he duellis, conpyret maliciouſlie, with the faid Schereff, and instigat him to tak and apprehend the faid Messinger, be force, put him in waird, and thairby to prevene that he had na power to denunce the faid Alexander and his complices to the horne, for nocht finding of the faid Caution, quhairby the faidis Letteris mycht haif bene formerlie repoirtit, deulie execute and indorfate to this day: Quhilk Scheref of Murray, vpon the sevint of October laſt, eftir the charge gevin to the faidis defenderis, be instigatioun foirſaid, barbaruſlie maid eruptioun in Patrik Dumbaris hous, in Gowfurd, quhair the faid Messinger was for the tyme; entering within the faid hous, accompaneit with the faid Alexander Tulloche and certane vtheris, to the number of ſevin personis, or thairby, with drawin fuordis, affailzeit the faid Messinger: and eftir mony outragious woirdis, affirmeing to tak the faidis Letteris from him, and to bereif him of his lyfe; first denudit him of his fuord, gantiletis, dager and vtheris wapponis, tuik and apprehendit him, perforce, led him captiue to the Caſtell of Forres, being the faid Schereffs awin duelling hous, and ſua *carcer privatus*, bot¹ ony lauchfull Warrant: In the quhilk priſſon the faid Messinger was detenit, maiſt wranguſlie; luiking at all tymes to haif bene bereft of his lyfe, be the ſpace of ten dayis; and at laſt, be interceſſion of freindis, the faid Scheref wald nawayis put the faid Messinger to libertie, quhill² he had forcet and compellit him to ryve³ our faid ſouerane lordis Letteris, with the executiones vpon the bak thairof, with his awin handis. Lyk as, the faid Messinger, for juſtifeing the treuth of the faid matter, hes raifit his hienes Letteris, be delyuerance of the Lordis of Secreit Counſall, for chargeing the faid Scheref and Alexander Tulloche and remanent perſones, thair associattis, to anſuer to the faid complent. Quhilk allegiance, the faid Johnne Dumbar, cautioner foirſaid, offeris him to verifie instantlie, be production of the faidis Letteris, revin; be the faid Messingeris awin Declaratioun, preſent at the bar, with his ayth of veritie vpon the ryveing thairof, and be the faidis Letteris raifit befor the Counſall, beiring the faid complent. In reſpect quhair of, the faid cautioner fould nawayis be vnlawit: At the leiſt, the Juſtice can nawayis vnlaw the cautioner, quhill the tryell of the premiſſes befor the Counſall. And thairupoun, the faid procuratour, in name of the faid cautioner, aſkit instrumentis.

¹ Without.² Until.³ Tear in pieces.

THE Justice ordanit the said Johnne Dumbar to be vnlawit in the panes contenit in the Actis of Parliament.¹

[*Mr Alexander Coluill, Justice-Depute.*]

Treasonable Murder under trust, &c.

Nov. 23.—JOHNNE MURE, elder of Auchindrane, and Johnne (James) Mure, younger of Auchindrane.

Dilaitit of airt and pairt of the crymes following, viz. the Auld Laird, for the Slauchter of vmq^{le} Sir Thomas Kennydie of Culzeane, knycht, and vmq^{le} Williame Dalrumpill: And the Young Laird, for airt and pairt of the Slauchter of the said vmq^{le} Williame Dalrumpill.

PERSEWARIS, Sir Thomas Hammiltoun of Bynnie, knycht, Aduocat to our fouerane lord for his entreis, Johnne Erle of Caffilis, (Bessie Dalrumpill, as mother.)

PRELOCUTORIS for the pannell, the Laird of Caldwell, The Laird of Bombie, The Laird of Blair Younger, Mr Williame Oliphant, Mr Johnne Ruffell, Williame Mure of Randerstoune.

My lord Aduocat protestis that this dyet may continew, in respect of the grit disorder of this hous, this day;² vnto the tyme the Justice tak ordour thairwith.

THE Justice continewis this dyet to the last day of November instant; and Ordanis the Laird of Auchindrane elder to be of new committit to waird within the Tolbuith of Edinburgh, and Young Auchindrane to be committit to waird within the Castell of Edinburgh, thairin to remane quhill the said day.

Nov. 30, 1608.—THE Justice, be directioun of the Counfall, continewis this dyet to the thrid day of ffebruare nixtocum; and Ordanis the pannell to enter to thair wardis of new agane, &c.—Vnto the quhilk continuatioun the Lairdis of Auchindrane baith disassentit; and nochtwithstanding thair of, and in respect of thair innocencie of the allegit crymes aboue writtin, offerit thame felfis to the tryall of the Law for the samyn, and thairupon askit instrumentis.

Feb. 3, 1609.³—THE Justice, be command of the Counfall, (continewis) this dyet to the aucht day of ffebruare nixt.—(Feb. 8, 1609.) THE Justice continewis the dyet to the thrid day of May nixtocum.⁴

Slaughter.

Dec. 21.—ALEXANDER TULLOCHE, appeirand of Tannacheis, and William Cuik in Forres.

¹ This at first sight appears to be a very arbitrary mode of proceeding; but his *recourse* against the party would be reserved entire.

² The influence of these atrocious malefactors was such, that by false representations, and the incessant complaints made by them and their friends to the public, of the oppression of the Lord Advocate, in cruelly delaying their case, though he knew them to be innocent, they succeeded in raising such a popular ferment, that the Court had to be dismissed on this and perhaps on other occasions.

³ Sir Williame Hairt officiated as Justice-depute on this and the following diet.

⁴ No farther notice of proceedings before the Court of Justiciary occurs until Jul. 17, 1611.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Torrie in Logiehauche, and Agnes Douglas, his spous.—Continewit to the fyftene day of Junij nixt.¹

[*Mr Williame Hairt, Justice-Depute.*]

Forcing — (Rape.)

Dec. 30.—JOHNNE ERROLE, cowmone poft.

Dilaitit of the filthie and detestabill cryme of the abufeing and fforceing of Jonet Craig, ane young virgane of xj yeiris of age.

PERSEWAR, Mr Robert Foullis, Aduocat, fubftitute to our fouerane lordis Aduocat.

DITTAY against the Pannell.

JOHNNE ERROLE, cowmoun poft, 3e ar indyttit and accufet, fforfamekill as 3e, haifing fchaiken af all feir of God, reuerance to our fouerane lordis lawis, or regaird to ciuill honeftie, as a diffolute and vyld perfone, ouercum with the beiftlie rage of 3our awin filthie luft, about ane half 3eir fyne, or pairby, to get 3our filthie appetite quenchet, drew acquaintance with Jonet Craig, dochter to vmq^{le} Andro Craig, mercheand burges of Edinburgh, ane honeft manis bairne, and ane 3oung virgane, nocht past the age of elleuin 3eiris; and haifing forgadderit with hir, upone the Hie freit of this burgh, vnderftanding hir to be at the fcole, maift craftillie and vnhoneftlie feducet and tryftit hir to gang with 3ow to Hammiltonef clofe-fute, quhair 3e was myndit maift barbarufflie to haif abufet hir; and pan gaif hir certane billis, with vther allureing woirdis, to gang with 3ow: And becaus, at that tyme, 3e gat nocht 3our beiftlie defyre fatisfeit, perfauing the fimPLICITIE of the bairne, and how eafilie fcho micht be circumvenit, 3e, a tuentie dayis fyne, or thairby, eftir foure houris at evin, and ringing of the Prayer-Bell, awaitit the faid Jonet at the mercat croce of this burgh, and be geving to hir of apillis and vther frute, of new, agane maift craftillie feducet and intyfet hir to gang with 3ow; quha, vpone bairnlines and meir fimPLICITIE, haifing past with 3ow to Bellis-wynd-heid, 3e tuik hir in to ane bak turnepyke, within the faid wynd, and behind the 3et pairof, maift filthielie forcet pe faid bairne, and did quhat in 3ow lay to haif carnall deilling with hir, and to haif bereft hir of hir virginie: At the quhilk tyme, fcho haifing cryit that 3e crewallie hurt hir, 3e maift barbarufflie and crewallie, to haif 3our filthie appetite fatiat, pat 3our handis vpone hir mouth, that hir cryis fould nocht be hard, and pairby stoppit hir braith and almoft fuffocat hir, and had nocht failzeit to haif filthielie defloirit hir, gif 3e had nocht bene fkarrit be tua women at pat instant. Lyk as, 3e, perfeviring in 3our former beiftlie rage of luft, vpone the fevintene day of December instant, being Satterday, at fyve houris at evin, 3e awaitit, of new agane, the faid Jonet Craig at the mercate croce of this burgh, quhair fcho, with vther honeft menis bairnis war playing thame for pe tyme, and pair, with walnuttis, cheftennes and appillis than gevin be 3ow to hir, 3e maift craftillie feducet pe faid bairne to gang with 3ow; quha haifing refuifet to gang with 3ow, 3e maift forceablie harrillit hir down the freit with 3ow; and 3e, being demandit be dyuerfe perfones that met 3ow, quhair 3e was taking hir to, 3e maift diffimulatlie and fallie gaif thame anfuer, that fcho had bene frome hame all that day, and pat nane of the houle knew quhair fcho was, and pat pairfoir 3e was taking hir hame; at the quhilk tyme, 3e tuik hir to pe faid bak turnepeck in Bellis-Wynd; quhair 3e, aganis pe bairnis will, tuik vp her claithef, and maift filthielie forcet 3our felf to haif ado with hir, and wald nocht pairt frome hir quhill 3e gat 3our beiftlie will fatisfeit, and was within hir body; and fcho, haifing in maift pitious maner cryit, that 3e hurt hir, 3e, as ofbefoir, pat 3our hand vpone hir mouth and held in hir braithe; quhilk is nottourlie knawin. Lyk as, 3e and pe faid bairne being laitlie examinat, in prefens of pe Miniftrie and Magistrattis of this burgh, 3e and fcho haif confeffit pe treuth of pe premissis, be 3owr Depofitionis. Quhairin, 3e haif

¹ No farther notice of this case occurs on the Record. See the preceding case, Nov. 9, 1608.

committit the maist haynous, detestabill and odious cryme of Rapt, Raveifching and Violent fforceing of the said young bairne; the lyk quhairof aucht nocht to be namet within any Cristiane kingdom subiect to a Cristiane Prince, or amang Cristiane people reulit with guid lawis.

The Aduocat, for verifeing of the Dittay, producet the saidis Johnne Errole and Jonet Craigis Depositionis, subfcryuit be his hand, and be certane of the Ministeris and Magistrattis of Edinburgh and Elderis of the Sessioun of the Kirk; and in respect thair of, Protestis for Wilful Errour, in caice the Affyse Acquit.

VERDICT. The Affyse, be the mouth of Williame Trumbill, mercheand in Edinburgh, chancellor, all in ane voce, fband, pronuncet and declairit the said Johnne Errole to be ffylet, culpable and convict of the fforceing and abuseing of the said bairne, in maner, and at the perticular tymes and places aboue spcifeit and fet doun in the said Dittay.—SENTENCE. For the quhilk caus, the said Justice-depute, be the mouth of Johnne Lawfone, dempster of Court, decernit and ordanit the said Johnne Errole to be tane to the Castell-hill of this burgh; and thair to be hangit vpone ane gibbet, quhill he be deid; and all his moveabill guidis, gif he ony hes, to be escheit and inbrocht to our fouerane lordis vse, as culpable and convict of the saidis crymes; quhilk wes pronuncet for dome.

[*Mr Alexander Coluill, Justice-Depute.*]

Stouthreif—Hurting and Wounding.

Jan. 3, 1609.—JAMES HUNTER of Hagburne.

Dilaitit of airt and pairt of the Steilling of ffourtie pundis furth of Robert Hogis purse, potter in the Potter-Raw (of Edinburgh); committit in the moneth of October, I^m.V^c.lxxxxviiij; and Hurting of the said Robert in his heid, and leifing him for deid, at Theyuis corse.¹

PERSEWER, Robert Hog, potter.

Continued to the air of 'Roxbur', tertio Itineris (vel super premonitione) xv dierum.

[*Sir Williame Hairt of Prestoun, Justice-Depute.*]

Slaughter.

Jan. 31.—ANDRO AIRMESTRANG of the Langholme, Ebbie¹ Airmestrang of Kirktonehill, James Airmestrang of Cannabie, Thomas Airmestrang callit *the Mercheand*, and Johnne Murray, myller in the Cruikis.

Dilaitit of airt and pairt of the Slauchter of vmq^{le} James Somervell in Eirdhouffis; committit in the moneth of

PERSEWAR, Robert Somervell, fervand to the Laird of Waftraw, as neir kynfman.

PRELOCUTOURIS for the pannell, Mr Laurence McGill, Adame Cunninghame, (Advocates.)

¹ Thieves' Cross. ² Perhaps a clerical error for *Ekkie* (Hector,) a common name in the south at that time. *Habbie* was also a favourite name. It may, however, be a familiar abbreviation for Ebenezer, though the name was unusual among the Armstrongs, whereas *Ekkie* was very prevalent.

The perfewar declairis, that at the raifing of thir Letteris, informatioun was gevin to him that the perfonis aboue writtin, presentlie enterit vpone pannell, war culpable of the Slauchter aboue specifcit; and now, fenfyne, he is certanelie informet, that thai, nor nane of thame, war present at the committing thairof: In respect quhairof, and that thai ar altogidder Innocent of the faid cryme, he passis *simpliciter* fra the perfute. Quhairvpoune the faidis perfonis on pannell and thair prelocutouris askit instrumentis.

[CURIA JUSTICIARIE, *f. d. n. Regis, tenta in Pretorio de ST ANDROIS, decimo Marcij 1609, per Dominum Willielmum Hairt de Prestoun, Justiciarium deputatum principalem.*]

ASSESSOURIS.

The Erll of Dumbar,¹The Erll of Montroife,²The Erll of Lowtheane,³The Collectour,⁴The Clark of Register,⁵My Lord Previe Seill,⁶My Lord of Wrychtislandis,⁷Sir Robert Meluile of Murdocarny.⁸**Treason—Corresponding with the Pope, in the King's name.**

[THE history of (Sir James Elphinston) LORD BALMERINOCHE'S TREASON has been so fully related by *Spottiswood, Johnstone, Calderwood, Robertson, Laing, &c.* and by *Mr Wood*, in his edition of *Douglas's Peerage and History of the Parish of Cramond*, that it only seems necessary for the Editor to supply the real facts, so far as they appear on the face of the Criminal Records; and further, by way of Appendix, to give a few authentic Letters, and other documents, which have been preserved.

Whatever may have been the real or alleged participation of this eminent Lawyer and Statesman in this Treason, it seems clear, as *Laing* remarks, that 'if Balmerino deceived his master, it was neither with a criminal intention, nor to a treasonable extent. But his ruin was secretly projected by Spottiswood, Dunbar, and Cecil, his implacable enemies; and, according to his own Narrative, much address and many secret intrigues were employed to persuade him, by a more ample and explicit Declaration, to exculpate the King. His life and estate were secured by promises; his offices were to remain at the King's disposal; and, on these conditions, he acknowledged that the Letter was surreptitiously obtained, when James had refused to correspond with the Romish See.' Thus, in order that he might fully exonerate the King, this unfortunate Nobleman was led into the fatal snare, and confessed *more* than the truth; under the full expectation, doubtless, that not only would the Royal promise of sparing his life and fortune be observed, but that he would, after a short period of retirement from the Court, be reinstated in all his lucrative and honourable offices.

It may be proper to remark, briefly, that SIR JAMES ELPHINSTON was the third son of Robert third Lord Elphinston. He was successively a Lord of Session (Lord Innernochtie), one of the Commissioners of the Treasury, called 'THE OCTAVIANS,' Secretary of State, and, Feb. 20, 1604, was

¹ Sir George Home, Lord High Treasurer of Scotland, was created Baron Home of Berwick, Jul. 7, 1604, (English Peerage,) and Earl of Dunbar, in Scotland, 3 Jul. 1605. This celebrated person was also Chancellor of Exchequer, in England. The King employed him as the chief leader in the restoration of Episcopacy in Scotland, in the Parliament at Perth, Jul. 9, 1606; for which service, and for acting as High Commissioner to the General Assembly of the Church of Scotland, in a manner highly acceptable to the King, he was installed a Knight of the Garter, May 20, 1609.

² John fourth Earl of Montrose, afterwards President of the Council, married Margaret, eldest daughter of William first Earl of Gowrie. It was this nobleman who fought the remarkable combat with Sir James Sandilands, 19 Jan. 1695, at the salt-tron of Edinburgh, as recorded by Birrel. See Diary, p. 34.

³ Robert second Earl of Lothian, who, when Master of Newbottle, had been Master of Requests to King James VI. ⁴ 'Mr Johnne Prestoune of Pennycuke.'

⁵ Sir John Skene of Curriehill.

⁶ Sir Richard Cockburn of Clerkington.

⁷ Sir Lewis Craig, one of the Ordinary Lords of Session.

⁸ Sir Robert M. 'of Brint Iland' is named in *Reg. Mag. Sig.* They were both Extraordinary Lords of Session.

created Lord Balmerinoch. In the same year he was nominated one of the Commissioners to treat for an Union with England; and on March 6, 1605, was appointed Lord President of the Court of Session. Notwithstanding of his holding, at the same time, the 'incompatible offices' of Lord President of the Court of Session and Secretary of State, (which, however, were in like manner enjoyed by his successor, Sir Thomas Hamilton, afterwards Earl of Haddington, &c.) 'yet he stemmed the secret and corrupt influence of Dunbar, on the bench, with a spirit that probably accelerated his fall.'¹

The sentence of death, as is well known, was not carried into execution. His Lordship was allowed 'Free-ward' in Falkland, and within one mile around that place. Having endured this nominal restraint for a short time, he was permitted to retire to Balmerinoch, his own estate, where he lingered about three years, and at length died, of a broken heart, A.D. 1612.

His son, John Lord Balmerinoch, was formally restored in blood, and to the dignity of the Peerage, by writ, under the Great Seal.²

Mar. 10.—JAMES LORD OF BALMIRRIENOCH.

Dilaitit of the treffonabill, fraudulent, and furreptitious procureing of ane LETTER, paft be his Maieftis hand, without his hienes knowlege, direct to Pope Clement the Aucht, in the 3eir of God 1598, treffonabillie adding (eftir the fubfcriptioun of the faid Letter) of the ftyles of 'SANCTITAS' and 'FILIUS' to the faid Letter; and treffonabillie affixing his Maieftis Signet thairto; committit in the yeir of God 1598, or thairby: And treffonabill affifting Sir Eduard Drummond, in his treffonabill trafficking, for the advancement of Papifl courfes, at the tyme forfaid.

DITTAY *against James Lord Balmerinoch.*

JAMES LORD BALMIRRIENOCH, ye ar indytit and accuset of the crymes of Leafmaieftie and Heich-Treffone following. Forfamekill as, 3e, being honouret and advancet be his Maieftie, nocht only to heich and eminent places in Seffioun and Counfall, bot also truftit with the office of Principall Secretarie to his hienes, quhairby ye war in dewtie bund, aboue all vthers, to haif bene moft cairfull of his Maieftis honour and preferuatioun; nochtwithftanding quhairfof, ye, preferring your awin vndewtifull and vnlawchfull privat respectis, to his Maieftis reputatioun and faftie, and being informet, in the yeir of God I^m. V^c. four-fcoir aughtene yeiris, by your neir kynfman, Sir Eduard Drummond,³ [quhome ye knew to be ane profeffit Papift, maift ferventlie affected to the furtherance of all Papifche courfes, and to haif bene ane Secretare to ane Cardinall at Rome, and thairfoir the vnfitter to haif bene maid chofe of and truftit by yow, for wryting or playing the clerkis office to his Maieftis Letteris directit that way,] that he come to this cuntrie, directit be the Bifchope of Vaizon,⁴ to deall for procureing of his Maieftis Letteris of recommen-

¹ *Laing's Hist.* III. 57.

² See REHABILITATIO, *Reg. Mag. Sig. Lib.* XLVIII. No. 152, dated August 4, 1613.

³ Marjory, the second daughter of Alexander second Lord Elphinston, and paternal aunt of James, first Lord Balmerinoch, married Sir Robert Drummond of Carnock. Sir Edward was perhaps her son, and cousin german of Lord Balmerinoch. ⁴ *Robertson*, in *History of Scotland*, and *Wood*, in *Peerage of Scotland*, call him *Drummond*; but he was William *Chisholme*, 2d of the name and surname, Bishop of Vaison, and paternal nephew of the 1st, who had, a short while after 1561, been, by Papal Brief, created Bishop of Dunblane; and on his finding it inexpedient to live in Scotland, he was appointed Bishop of Vaison; which situation he resigned, in favour of his nephew, when he became a Carthusian Friar of Grenoble. Both of these distinguished Churchmen were younger sons of the Cromlix family, Perthshire. Sir James Chisholme of Dundurn and Cromlix, who was concerned in the Popish Plot, in 1593, seems (*Balfour's Annales*, II. 29) to have been brother of the younger of the Bishops of Vaison. The Chisholmes of Cromlix had, above a century, been hereditary Baillies and Justiciaries of the Ecclesiastical Lordship of Dunblane, and had furnished three Bishops of Dunblane; James and William Chisholmes, brothers, and their nephew William Chisholme, the elder of the Bishops of Vaison above mentioned. William Chisholme *tertius*, was kinsman of Sir Edward Drummond and of Lord Balmerinoch, though in what degree is unknown.—The Editor is indebted to the industry and research of the Reverend Mr MacGregor-Stirling for the information contained in the preceding Note. That learned gentleman has collected much original matter relative to the See of Dunblane, which it is hoped he may, some time, be induced to lay before the public.

datioun to Pope Clement the Aucht, for making the said Bischope ane Cardinall; being in grit hoip that his Maiesteis recommendatioun to the said place wald be ane grit furtherance to that his expected promotioun: YE, nochttheles, nocht only treffonabillie assenting to the said motioun, bot most willinglie and readelie taking vpone you to be ane assifter to him in that imployment, did dyuerse tymes prease his Maieftie thairin, and did offer to his hienes the frame of fuche ane Letter as ye wald haif had signed, by his Maieftie, to the Pope; whome yow fand, nocht only vnwilling to wryte at all, bot absolutelie to condampne the motioun for correspondence with such ane persone; who, alswell in respect of the irreconceillabill contrarietie betuix his Maieftie (in respect of his professioun in Religioun) and the Pope; as also, for that the said Pope could nocht bot expect those tyillis and attributtis whiche his Maieftie, out of his conscience, could nocht yeild him, for any cause quhatsoever: YE, neuertheles, nocht desisting frome your vndewtiefull instance, replyit to his Maieftie, most craftillie, 'that quhatueir schew of discontentment his Maieftie vtterit against Puritanes, ye could persauie nathing bot his Maieftie wald turne mair preceise nor any of thame!' Thairby, as it war, spurring his Maieftie to inclyne to such ane politique course, which none bot foolische or preceise sottis wald refuis to imbrace: And nochtwithstanding of his Maiesteis oftin and flat denyallis, and refuifallis to harken to your motioun, ye nocht only desistit nocht, (as ye aucht to haif done,) bot still resoluet to prosecute your treffonabill intent: WHEARVPONE, ye conspyret with the said Eduard Drummond, vpon the meaynes how to dissaue and beguyle his Maieftie, in the procureing of fuche ane Letter, and did devyse and cause to be drawin vp fuche ane Letter, with the said Sir Eduardis Drummond hand, as frome his Maieftie to the Pope, expressing thairin thankis for the Pope's kyndnes and favour, in former tymes, [albeit ye knew in your conscience that his Maieftie nevir had any deilling with the Pope, nather had he euir expected, requyred, or ressaueit ony kynd of fauour frome him,] subioyning thairto ane recommendatioun of the Bischope of Vaizon to be ane Cardinall; thairby to be the moir able to further him in all his effairis; [nochtwithstanding that your self, best of all vtheris did vnderstand, by the most constant ansueris gevin, at all tymes, by his Maieftie, to your frequent and importune persuasiones in that purpois, that his Maieftie wald neuir consent to haif any dealing or correspondence with him,] and quhat forder woirdis of compliment or specious promeissis vpone his Maiesteis behalf yow did insert in that Letter, [as weill appeiris yow did] by thease wordis of that pamphlet of Tortus,¹ (quibus preter cætera) your self best knawis. AND for the better conveyance and passage of this Letter by his Maiesteis hand, yow did contriue this course; *ffirst*, that it sould be schiftit in amangst dyuerse vtheris Letteris to be signed; *secundlie*, that the same, with the rest, sould be presented to his Maieftie, at sum tyme of his going out haistilie to the hunting, so as, being on the suddane surprysed, he sould haif no lasour to obserue and peruse the Letteris; and, *thridlie*, that such woirdis of tytill and style as ar vsuallie gevin to the Pope, sould be forborne to be set down in it, leif perhappis his Maiesteis eye lichting vpone ony of thame whilles he war signeing, he micht thairby tak occasioun to obserue that Lettre, and so discouer your fraud; and convenient spaces being left for thame, thay sould efterwardis be accomodatit and insert: ACCORDING to quhich course, ye, abusing the trust reposit in yow be his Maieftie, ane day, in the moirning, quhen his Maieftie was going to hunting, in haist, estir that ye had excusit your self of cuming to truble his Maieftie with the signeing of any Lettres, att so vnseasonabill ane hour, in respect, as ye informit his Maieftie, Sir Edward Drummondis stay any langar in the countrey wald bot irritat the Ministeris, and breid occasioun of ielosie and fals and scandalous bruiteis;²

¹ This alludes to the reply by CARDINAL BELLARMINE, under the feigned signature of MATTHÆUS TORTUS, to a book published by King James, anno 1607, under this Title, 'TRIPlici NODO TRIPLEX CUNEUS, or an Apology for the Oath of Allegiance against two Brieues of POPE PAUL V., and the late LETTER of Cardinal Bellarmine to Blackwall the Arch-priest.' In this reply, the King is accused of having abandoned his former sentiments, in favour of the Roman Catholic Religion; and the Letter to Pope Clement VIII. is quoted, in proof, by his antagonists, who assert, that Lord Balmerino fell a victim to the King's crooked policy, and that that able and distinguished Nobleman had been induced, through his devoted attachment to his royal master, to criminate himself, in a matter wherein he was really innocent, having merely acted by the King's express instructions.

² Reports. Fr. bruit.

and thairfore, that ye wer forceit, att that tyme, to present his Dispatch to be signet by his Maiestie, contening no thing, bot sum two or thrie Letteris, in Latine, to the Duikis of Florence, Savoy, and such vtheris, in the said Bischopes recommendatioun¹: And thane, in place thair of, ye did present the said Letter to the Pope, and vther thrie, to sa mony Cardinallis in Rome; and procureit the famin to be signed, in place of thais vther Letteris, quhich only feruit for youre cloik, in the convoy of that buffines: Quhilk being done, Sir Edward Drummond, by your directioun, did efterwardis add and insert the Popes tytillis and styles, boith in the beginning of the Letter and in the end thair of, betuix the Letter itt selff and his Maieftieis subscriptioun, as the word '*Sanctitas*,' and the word '*Filius*,' and such vtheris as ye thocht proper for the Letter to the Pope, (quhich verry twa wordis of '*Sanctitas*' and '*Filius*,' his Maieftie had oftin before forewairnit yow, that he wald rather loife his lyffe than wryte any of thame to the Pope): AND, be your directioun, the Letter being clofet by ane of your seruandis,² his Maieftieis Signet (quhair of the keping wes committit to yow, be vertew of youre Office of Secretarie,) wes by yow, aganis the honour and dewtie of your place, trust, and credite reposit in yow be his Maieftie, most vndewtifullie, falslie and treffonablie affixit to your said forgeit Letter.³ BE occasioun quhair of, quhen his Maieftie cam efterwardis in questioun, in the lait Quene of Ingland, of bliffit memorie, hir tyme, by meanis of hir Ambassadoure, quho, in the 3^{er} of God I^m.VI^e. yeiris, expostulattit with his Maieftie concerning such ane Letter writtin by him to the Pope; ye than, being askit thair of be his Maieftie, did vterlie deny thair wes any such mater: Lyke as, for justificatioun of your denyall, ye send Sir Edward Drummond, quho, att your desyre, being cum from beyond sea to this countrey, and being examinat thair of, did, att your perswasoun, deny that he careit any such Letter to the Pope: As alswa, quhen Sir Edward Drummond wes committit to waird for this caus, within the Castell of Edinburgh, ye becam ane ernist fuitter to his Maieftie for his libbertie, and wes the meanis to obtene itt; quhairvpoun the said Sir Edward being efterwardis to returne to Rome, ye delt ernistlie and instantlie with him, to lawboure to recover agane the said Letter to his handis, and to distroy itt; quhich he promesit to do, gif be any meanis he could: And ye lykewyse gaif his Maieftie full and absolute assureance, that that repourt, quhairvpoun the said lait Quene of so wordie⁴ memorie did expostulat with his Maieftie, wes vterlie fals: And that nather his Maieftie had ewir writtin any Letter to the Pope, nor yet that Sir Edward Drummond had evir delyuerit any, in his Maieftieis name, to him: Quhilk strong denyall, to his Maieftie, of your and Sir Edward Drummondis giltynes in that mater, wes the occasioun that movit his Maieftie to grant to Sir Edward Drummond his libertie: And althocht that the constant sinceritie of his Maieftieis professioun in Religioun wes so weill knawin to the warld, by his daylie word, writt, and praktise, as nather that lait Quene of happie memorie, nor the religious people of the Estait of Ingland did any langer dout of his Maieftieis innocence in this caice, howfone thay had hard of his Maieftieis denyall thair of, (as he mycht most iustlie haif done,) yit lay it nocht in your handis; bot, gif God had not movit thair heart to judge so honorablie and iustlie of his Maieftie in this caice, the jealousie and mistrust of his Maieftieis sinceritie in Religioun, being thus spred, in both realmes, mycht haue reffaut such incres and growth, as mycht haif hafardit thairby, alswaill the present securitie of his Maieftieis persoun and estait, att that tyme; as also, his Maieftieis happie attening to his iust clame and rycht, in Ingland: THE ground of all this calumny and sklander, and quhatsumewir such lyk hafardis mycht haif followit heirvpoun to his Maieftieis persoun and estait, arryng and having the only fundatioun by this your occasioun and treffonabill dealing, quhilk weill apperit by the consequent; ffor how fone it pleasit God to call that Quene, of renownit remembrance, to his mercie, and his Maief-

¹ Had such a warm debate and altercation, as that before recited, taken place, is it to be conceived as at all likely, that a person of James's jealous disposition, would have signed such Dispatches and Recommendatory Letters, without first carefully perusing and scanning every phrase contained in them? Unquestionably the King would either have postponed his hunting, or, at least, would have desired the papers to await his return, when he could at leisure consider the import of such important documents. On the other hand, it must be admitted, that the Confession of Lord B. is unqualified, and apparently sincere, and is conceived in the strongest terms which language could devise.

² Clerks to the Secretary of State.

³ Dated at Holyroodhouse, Sep. 24, 1599.

⁴ Worthy.

tie to the lauchfull poffeffioun of his rychteous inheritance, with moir perfyte ioy and vniuerfall applaufe of all his fubiectis, nor any vther Prince obtenit the poffeffioun of his prediceffouris Croun, his Maieftie, alfweill by his sincere profeffioun as by his actiounis and lawes, publeiffing to the warld his moft conftant zeale to mantene and propagat the trew Religioune, and to fuppres Papiftrie, and all contrarie profeffioun, the hoill Papiftis within this Ile, and speciallie, in his hienes Kingdome of Ingland, finding thairby thame felffis vterlie difapointit of thair former hoipes, foundit vpoun thais Letteris, quhairby thay promefit to thame felffis all libertie and tolleratioun of thair fuperftitioun, in his Maieftis dominiounis; and efteming, that his Maieftie, in nocht performing thair of, had delt wrongfullie and vniuftlie with thame, nocht only did Clark and Watfoun and thair complices, Preifts, and vtheris Papiftis, in the fyrft yeir of his Maieftis regime of Ingland, confpyre aganis his lyffe, pofteritie and eftait, bot alfo the incomparable CONSPIRACIE of the POWDER TRESSOUN (exceeding in malice and crewaltie all vther Treffounis, that evir wes attemptit, in any aige or countrey) wes devyfit and profequitit by ane damnit crew of merciles Papiftis, to the extreame danger of his Maieftis moft facred perfoun, his moft gracious Quene, thair Royall iflew and hoill body of that Eftait; for no vther quarrell, bot becaus thay thocht thame felffis wrongit by his Maieftie, for nocht accomplifching the hoipis gevin by thais Letteris to all Papiftis in his dominiounis: Lyke as, fenfyne, Cardinal Bellermine, or *Matheus Tortus*, his chaplain, and vtheris, moft impudent and infamous Popifch wryteris, haif, (fa far as in thame lay,) preiffit by thair fals, calumnious and leing lybellis, groundit vpoun your treffonabill Letteris foirfaidis, to fteingie (sully, *stain*) his Maieftis moft pure, perfyte and vnspotted reputatioun. OFF the quhilkis treffonabill crymes aboue writtin, of furreptitious, fraudulent and fals fteling his Maieftis hand to the faid Letter, without his Maieftis knowlege, and contrarie to his Maieftis declarit will, and treffonabill affixing of his Maieftis Signet to the faid fals Letter, and affifting knawin profeffit Papiftis, in thair treffonable courfis, to the danger of fubuerfioun of Religioun and overthrow of all trew profeffouris thair of; and drawing his Maieftis lyff, eftait, Croun of this realm, with his rycht of fucceffioun to the Croun of Ingland in moft extreme perrell, and bringing moft fals and fcandalous imputatiounis to his Maieftie, both in poynt of honour and Religioune, ye ar airt and pairt: And the famin hes bene done and committit by yow, and vtheris in your name, of your caufing, command, affiftance and ratihabilitioun. FOR the quhilkis treffonabill crymes foirfaidis, ye aucht and fould be pwneiffit, be fforfaltre of your lyffe, landis, and guidis to his Maieftie; accoirding to the Lawis and practik of this realme.

THE faid James Lord Balmirrenoch, being inquyret be the Juftice, gif he wald defyre the affiftance of any freindis or Aduocattis to be his preloquoutouris, according to the benefite of the law and ordour of the Court, quhilk fould be offeruit to him? He anfuerit, that he had neuer fa grit neid of preloquoutouris and (fa) grit neceffitie to fpeik; the caus being fic as concernis his lyffe, his eftait, and all that he poffeft; bot he faid, he had gritar neceffitie to keip filence, his offence being fik as could admitt na excufe; and his greif and forrow, that he could haif fa far abusit the truft his moft gracious Souerane reposit in him, being fa grit, as he defyrit na thing mair, than his cryme may be notifeit to all men: And feing, na freind wes acquent with his fact, he defyrit nane to fee the miserie thair of: And faid, he could defyre na Laweir to compeir and defend that fact, quhilk him felff had fa oft and juftlie condemnnet; as no place wes left to him nor any vther, to vfe ony defence thairin: And thairfoir, his awin haert witneffing moir aganis him nor ony vther could fay, he defyrit all men to knaw his cryme to be als haynous as it is; and did erniftlie intreat all thais that wer present, and wiffit that all the warld mycht heir him, to declair two poyntis,

quhair of he wiffis his Maieftie to be cleirit : *ffyrst*, of all fufpicioun that his Maieftie was ony wayis acquent with the wryting of that vnhappie Letter, that fwa his hienes innocencie and finceritie mycht be knawin to the haill warld ; ffor he declarit, as he wald wifs God to be mercifull to his faull, in the grit day, that his Maieftie wes moft falllie and vniuftlie chargeit with that Letter writtin to the Paip ; and that he could newir draw his Maieftie to lyk, or with patience to heir of that wickit motioun ; bot his Maieftie did vterlie and abfolutlie refuife, vpoun ony refpect or conditioun, to wryte to the Pope, as ane mater altogidder aganis his confcience to tak ony fic cruikit courfis, or to gif to the Paip thais ftyles and attributes quhilk the Paip affumit to him felf. Quhilk refusall could nocht fatisfie nor content him, bot in his politik warldlie reach, as ane naturall man, he went fordwart, in his awin vayne confait, aganis his Maiefteis declarit will, to that quhilk he thocht fould (have) advanceit his Maiefteis tytill, as hoping thairby to flay the censure of the Paippis Excommunicatioun, intentit aganis his hienes, quhilk he ferit mycht haif brocht him preiudice to his Maiefteis fucceffion, nor yit could he be ftayit from his vnhappie courfis, by his Maiefteis moft religious refolutioun ; quha, att findrie tymes, proteftit and declarit to him, that his hienes wald nevir burdene his confcience with ony fic vnlauchfull and cruiket courfis, bot wald only leane and reft vpoun Godis Providence and his awin rycht, with fic vther lauchfull and rycht meanis as his Maieftie mycht juftlie vfe : Befeikand all gentilmen and vtheris present, to beir trew recoird of his Confessioun of fa haynous ane offence, committit aganis fa gracious and bountifull ane Souerane, quho, be his vnderfuit fauour, had raifit his bafe fortoun fa bountifullie, that his landis, guidis and lyffe could be na reparatioun for fa grit ane offence.

The *fecund* poynt, quhair of he defyrit his Maieftie mycht be fred and cleirit, is ane opinioun, quhich ather fum in malice, or his freindis in the commiseratioun of his eftait, mycht confaue and think, that his Maieftie, in ane mater of this moment, (the fuggestioun of ane Letter of Recommendatioun,) mycht ferue to proceid with grit regoure and crewaltie aganis his lyffe and eftait ; bot he wald haue thais and all vtheris to remember, that his Maieftie hes gevin mony testimoneis of his clemencie, in materis gritlie concerning him ; and thairfore, thay fould nocht judge of his Maiefteis difpositioun to mercie, by his hienes proceiding, be iuftice, aganis him, bot wiffit thame rather to turne thair eis to his vnhappines, quha hes offendit his facred Maieftie, in fic ane poynt, as na favour can be extendit to him, without the hurt and interes of his Maiefteis honour, quhilk being deirar to his hienes than his lyffe, he man think and confefs, that tuentie thowfand fic lyves as his is, ar nocht to be compairit with it, or ballanceit aganis it ; nor did he defyre that his lyffe fould be fpairit, att fa deir ane rait as the leift tuich (Fr. *tache*) of his Maiefteis honour.

Forder, he cravit pardoun to protest thais tua thingis, for him selff. *Fyrst*, that he had na sic intentioun, as sum hes supposit, to draw in ony alteratioun of Religioun or tolleratioun, or quhat thay pleis to terme it; bot any meane warldlie course and devyse, quhilk he consaitit mycht be for the behuif of his Maiestie, quhilk he protestit to be of treuth. The *secund* thing is, he wald haif na man to think, that itt wes any gayne or priuat commoditie that drew him to that wicket cours; ffor he protestit that he nevir reffaut norexpected ony reward, from ony Prince leving, except from the Kingis Maiestie, his maister, allanerlie.

And sa concludit, that he had spokin sa much of the treuth aganis him selff, that he wald defyre na man to speik for him; and wald gif als littill buffines to the Aduocat, Justice, Affessouris and Assyse, as he could; and was content that the Dittay fould pas to the knowlege of ane Assyse.

IN respect of the quhilkis, THE JUSTICE Ordanit the said Dittay to be putt to the knowlege of ane Assyse, of the personis following. Thay ar to say.

ASSISA.

DAVID ERLI OF CRAUFURD, Lord Lyndesay, &c.	JOHNNE ERLI OF TULLIBARDIN, Lord Murray,	SIR ROBERT GORDOUN of Lochinvar, knycht,
GEORGE ERLI OF MARSCHELL, Lord Keith and Altrie, Grit Marshell of Scotland, &c.,	ALLANE LORD CATHCART, JOHNNE LORD SALTOUNE, DAVID LORD SCONE,	SIR WILLIAME LEVINGSTOUN of Kilsyth, knycht,
JOHNNE ERLI OF WIGTOUN, Lord Fleming, &c.,	ALEXANDER LORD GARLEIS, WILLIAME MAISTER OF TIL- LYBARDINE,	SIR JOHNNE HOUSTOUN of that ilk, knycht,
PATRIK ERLI OF KINGORNE, Lord Glammes, &c.,	SIR JAMES DOWGLAS of Drum- lanrig, knycht,	SIR PATRICK HOME of Pol- wart, knycht.

Quhilkis persounnes of Assyse being chofin, sworne and admittit, and Instrumentis tane thairvpoun, be our fouerane lordis Aduocat; the said James Lord Balmirrenoch, being accusit be the said Dittay, oppinlie red in judgement to him, in presens of the said Assyse; and for verificatioun thair of, the Aduocat, haifing producit the said James Lord Balmirrenochis Deposition, subscryuit with his hand; togidder with his Letter, writtin all with his hand and subscryuit be him, contening his speich, vterit be him befor the Lordis of his Maiesteis honorabill Previe Counfall of Ingland, togidder with ane Letter send be his Maiestie to the Aduocat, contening sum of the Lord Balmerinochis speichis to his Maiestie, att sic tyme as he preiffit to haif perswaidit his hienes to wryte to the Pope: And the saidis three writtis, being oppinlie red in judgement, in his presens and in presens of the saidis Assysouris; quhair of the tennour followis.

And fyrst, followis the tennour of HIS DEPOSITION.

ATT FALKLAND, the secund day of Februar, the yeir of God I^m. Vj^c. and nyne yeiris. THE DECLARATION and CONFESSION of THE LORD BALMERRENOCH, concerning ANE LETTER fraudulentlie and surreptitiouslie pro-

cureit to be writtin and sent from his Maiestie to POPE CLEMENT (VIII.) in the yeir 1598; maid in presens of my Lordis of his Maiesteis Secreit Counsell of Scotland, eftir namet; The Earles of Dumbar, Wigtoun and Lowtheane, the Lordis of Scone, the Justice Clark, the Collectour, Justice and Aduocat.

THE LORD BALMIRRENOCHE, being examinat, sworne and chargeit with pe offence of praktesing and surreptitious procureing of pe said Letter, (quhairby hath growne ane most fals and scandalous imputatioun to his Maiestie, both in poynt of honour and of Religioun,) eftir diuers meanis vfit by him, of denyall, conceilling, transferring and extenuatting the said offence, doeth att pe last expresse acknowledge and confes: That, in pe 3eir of our Lord 1598, att pe motioun of pe lait Archbisshop of Glasgou,¹ his Maiesteis Ambassadour, than resident in France, the Bisshop of Vaizon,² and sum vtheris, and att pe sollicitatioun of Sir Edward Drummond, directit from pame, for procureing of sum correspondence betuix his Maiestie and THE PAIP, be the said Lord Balmirrenoch, assenting to pe said motioun, did diuers tymes preise his Maiestie pairin, and did offer to his Maiestie the fram of sic ane LETTER as he wald haif had signed be his Maiestie to pe Paip; quhom, quhen he fand nocht onlie vn-willing to wryte att all, bot absolutlie to condem the motioun, or any correspondence with a persoun that did expect thais tyillis and attributes, quhich his Maiestie, out of his conscience, could nocht 3eild him, for any caus quhatsumeur; he, the said Lord Balmirrenoch, conspyring with Sir Edward Drummond, on pe meanis how to dissaue and begyle his Maiestie, in pe procureing such a Letter, with pe said Sir Edward Drummond's hand, as from his Maiestie to pe Paip, expressing pairin (as he sayeth) only thankis for pe Paip's kyndnes and favour, in former tymes, with recommendatioun of pe Bisshop of Voyzin to be a Cardinall; thairby to be moir abill to forder him in all thingis neidfull for his effairis. For the better convoyance and passage of pis Letter by his Maiesteis hand, the said Lord Balmirrenoch confesseth this course to haif bene by him contriveit; *fyrst*, that itt sould be chestit³ in amangis diueris vperis Letteris to be signed; *secundlie*, that the samin, with the rest, sould be presentit to his Maiestie, att sum tyme of his going furth haistlie, on hunting, so as, being on the sudden surpryfit, he sould haif nocht laifour to obserue and peruse the Letteris; and *thrydlie*, that such wordis of tyill and style (as) ar vsuallie gevin to pe Paip, sould be forborne to be sett down in itt; leif perhappis his Maiesteis eelichting vpone any of pame, quhillis he wer signeing, he mycht pairby tak occasioun to observe that Letter: and that convenient specis being left for pame, thay sould efterwardis be accomodattit and infertit: According to quhich course, he the said Lord Balmirrenoch confessing, that he, abuseing the trust reposit in him be his Maiestie, one day, in pe moirning, quhen his Maiestie wes going on hunting in haist, amangis vperis Letteris, writtin in Latine, to pe Duikis of Florence and Savoy and sum Cardinallis, in favour of pe Bisshop of Veyzon, did also present to his Maiestie (haveing formerlie refusit to wryte to pe Pope, and na thing suspecting that any such sould be offerit to his hand) the said Letter to pe Paip, and procureit it to be signit; quhich being done, he the said Lord Balmirrenoch confessit, that by his directioun, Sir Edward Drummond did efterwardis add and insert the Popes tyillis and styles, baith in pe beginning of pe Letter, and in pe end pairof, betuix the Letter itt selff and his Maiesteis subscriptionne, as the word '*Sanctitas*' and the word '*ffilius*,' and such vperis as he thocht proper for pe Letter to pe Paip: And that, by his directioun, the Letter wes feilit vp be ane of his seruandis, and the Signet also putt to itt. Concerning pe Letteris to the Cardinallis, he the said Lord Balmirrenoch sayeth, that thay wer cloise sealit vp; bot left without superscriptioun, and so delyuerit to Sir Edward Drummond, to be directit be pe aduise of the (Arch)bisshop of Glasgou: And that he did efterwardis vnderstand, that two of pe saidis Letteris wer gevin to pe Cardinallis Aldobrandino and

¹ James Beaton, (2d) Abbot of Aberbrothock, elected 1551, quitted the see in 1560, and was restored by Act of Parliament, in 1588. ² William Chisholme. See Note on Dittay, p. 569. ³ Shifted, shuffled.

Bellarmino, and pe thrid to Cardinall Caietane, Protectour of the Scottish Natioun. ffordermore, the said Lord Balmirrenoch Confesseth, that quhen his Maiestie cam efterwardis in questioun, in pe lait Quenis tyme, (by meanis of hir Ambassadour, that expostulattit with his Maiestie, concerning such a Letter writtin from him to the Pope,) he the said Lord Balmirrenoch, being askit pairof by his Maiestie, did vterlie deny that thair was any such mater: And lykwayis Confesseth, that he desyred Sir Edward Drummond (being cum att pat tyme from beyond the Seas, and examinat pairof, vpoun pe Lord Balmirrenochis sending for him,) to iustifie his denyall; and that Sir Edward Drummond did, att his desyre, accordinglie deny that he had careit any such Letter to pe Pope; as also, that quhen Sir Edward Drummond wes committit to preafoun for pis caus, to the Castell of Edinburghe, he the said Lord Balmirrenoch becam ane ernist futear¹ to his Maiestie for his libertie, and wes the meanis to obtene it; quhairvpoun Sir Edward Drummond, being efterwardis to returne to Rome, he the said Lord Balmirrenoch Confessit, that he delt ernestlie and instantlie with Sir Edward Drummond, to laboure to recover agane the said Letter into his handis, and destroy itt; quhilk Sir Edward Drummond promisit to do, gif by any meanis he could; and that the said Lord Balmirrenoch pairvpoun destroyit the copie of pat Letter, quhilk before he had retenit with him selff.

J. BALMIRRENO^r.

DUMBAR, WIGTOUN, LOWTHEANE, D. L. SCONE, (R^d) COKBURNE,
S^r To. HAMMILTOUNE, Jo. PRESTOUNE, S^r W^m HAERT.

Followis the tennour of

THE LORD BALMIRRENOCHES LETTER, *writtin and subscriuit be him, containing his SPEICHES, vttered be him to the Lordis of his hienes Previe Counsal, in Ingland.*

MY VERRIE HONORABLE LORDIS,

I FIND trew this day, in experience, that which I haif oft red and hard, that no exceiding joy nor exceiding sorrow can be cayried bot with silence. *Leues curæ loquuntur* (sayeth the tragique) *ingentes stupent*. From this it is that pe heavie greif and vnspeikable sorrow of my hart and soul, for my haynous offence aganis my most gracious Souerane, and his Maiesteis displeasour that he hes most iustlie conceaved aganist me, makis me that I haif no wordis whearwith I can expres pe fame: Quhen I luik vnto his Maiesteis innumerabill fauoris bestowed vpone me, haifing raifed my fortunnes (most miserable and vnworthie wretch!) far aboue my mereit and my foule abuse of his Maiesteis trust: which hes brocht this fals imputatioun vpone his Maiesteis vnspotted innocencie: I think pair is nothing in me may amend the fame; and pairfoir I find no vther end of my sorrow, bot, with the forlorne sone,² to say to his most sacred Maiestie, *peccavi in cælum et in terram!*—My offence is so greit that it can nocht be pardonet,—I am nocht worthie to be rekonet ony moir among his subiectis or createuris! I haif sinceirly confessit the veritie of my fact, in all the circumstances, nocht for obedience, or to liberat his Maiestie, (as sum wald fallie geve out,) bot for pe treuthes saik, and that his Maiesteis innocencie may be knawin to all the world: Bot allace! what unhappie man was I, that my devilisch affection and erroneous course fould haif led to ony thing fould haif offendit my most gracious Souerane! Micht nocht his Maiesteis rair pietie, singuler wisdome, and vnspotted sinceritie, in all his actiones, whearof I had so long experience, taucht me, that quhen his Maiestie was vnwilling, and did refuis fuche ane cruikit wordli³ course, the event of it could nocht prove bot unhappie! Thairfoir, since his Maiesteis foule is frie of it, let no pairt of the stayne ly vpone his Maiesteis honour; bot, geue⁴ his Maiestie can nocht vtherwayis be liberat of this imputatioun brocht vpone his Maiestie by that devillisch Letter, let naper my lyfe, my estait nor credeit be spared; bot, as I haif all by his Maiesteis fauour, so, let all go, to the last drope of my bloode, befoir any reproche for my most haynous offence fould be brocht vpone his innocent Maiestie: Bot my miserie, aboue all, is pe gritter, that it behoved me

¹ Suitor.

² The Prodigal Son in the Parable.

³ Worldly.

⁴ Gif, if.

offend evin in that point whairin his Maieftie hes ever bene moft tender, his confcience, which for ane thowfeand kingdomes he wald nocht hurt, and his reputatioun for finceir deilling, quhilk hes maid him famous throw all the world! In all theafe, his Maiefteis extraordinier delyuerances, miraculouſlie wrocht be God, for no caufe ſo muche as for his Maiefteis incomparable ſinceritie of heart to God, and juſt dealing to all the world. My Lordis, it ſall nocht be neceſſar to tranſmit my Confeſſioun to Scotland, or to remit my judgement or tryell pair, ſence for my offence, and his Maiefteis diſpleaſour conſaunt pairupoun, I haif abſolutelie ſubmitted my ſelf in his Maiefteis royall will. I raper¹ my life and all war takin, befoir I ſould ly ony longer vnder this moſt importable² burding of his Maiefteis heaue diſpleaſour. Thairfoir, my humbill ſute to your lordſchipis is, that ye will, in commiſeratioun of my miſerable eſtate, move his Maieftie to be pleaſed to luik vpon my Confeſſioun, accept my becoming in will, and but³ more delay, declair what oucht be done for reparatioun of his Maiefteis honour, which, to my greit greif, is tuiched be my moſt haynous offence; which, in all reuerance and humilitie, evin with the laſt drope of my bloode, I will obey and performe.

J. BALMERINO⁴.

Followis the tennour of the

LETTER ſend be HIS MAIESTIE to my LORD ADUOCAT, anent THE CONFERENCE betuix his Maieſtie and the Lord Balmerinoche, befoir the purcheffing⁵ of his hiegnes ſubſcriptioun to the LETTER to the POPE.

To our truſtie and weilbelouit Counſalour, SIR THOMAS HAMMILTOUN
of Bynnie, kny^t, our Aduocat, in that our Kingdome of Scotland,
JAMES R.

TRUSTIE and weilbelouit counſalour, Wee greit you weill. Quhairas, We haif concludit to haif ye Lord Balmirrenoche tryed before certane our Juſtices, by Commiſſioun, vpoun that his moſt treſſonabill and damnabill fact, committed by him, in the thifteous purcheffing and ſteilling throwch of Letteris, vnder our hand, directed to THE POPE OF ROME; We nocht being of ye knowledge pair of; bot vtherwayis, vpoun his moving of pat mater vnto ws, wer altogidder diſaſſenting pairfrome: We haif thocht mete, (for your better informatioun and gritar licht in pis matter, and to ye effect that you may pairvpoun ground your Dittay, and in his accuſatioun vrge the ſame as ane particular evidence of his giltines heirin,) to ſett doun, ſo far as our memorie can ſerue, the verie wordis of ye Conference paſt betuix ws att pat tyme, quhen he moved ws for pat Letter, quhich ſo fallſie and vndewtiefullie, without our knowlege, he thaireſtir purcheft to be paſt our hand, about ſum nyne or ten zeiris ago. One day, he inſiſted that We wald be pleaſed to wryte a Recommendation to ye Pope, in favouris of ye Biſhop of Vaizon, with a requeſt for promoving of him to ye hatt:⁵ He than ſchewit vnto ws, that by the vther⁶ his continewall ſtay att Rome, and by reaſoun of the aduerteiſmentis he wald mak from tyme to tyme, he wald ſerue for a ſpie to acquent ws with quhat courſes they had there; and that therewith, it wald be a greit credite to ye Natioun to haif thair countrey men Cardinallis: At quhich tyme We ſchewed vnto him, that We could nocht, in conſcience, geild vnto ye Pope thais tytillis quhich he did aſſume vnto him ſelf; and that We wald nocht, for any warldlie reſpect, do that, quhair of We had no warrand in conſcience: The wryting to ye Pope, in ſuch ſoirt as he wald accept pair of, being vnlauchfull for ony trew Criſtiane: Vnto ye quhich, We do perſytelie remeber, that he did then anſuer, that nochtwithſtanding quhatſoevir ſchew of diſcontentment We vterit aganis Puritanis, he could perceave no thing but We wald turne more preceiſe than any of pame, quha for ſuch a ſmall mater as a naked Letter of Recommendation ſould be ſo ſqueamiſch and nice. He farther added, att ye ſame tyme, that We ſould nocht cair quhat wer done pairin; bot willit ws to leue to Sir Edward

¹ I would rather that my life, &c.

² Unbearable, intolerable.

³ Without farther delay.

⁴ Procuring.

⁵ A Cardinal's hat.

⁶ Viz. By the uninterrupted residence of the Bishop of Vaizon at Rome, &c.

Drummond and him the filling vp of these styles ; and We being ignorant pairof, and done without our knowlege, itt could be no touch¹ nor greif to our conscience : Quhairvnto, We then anfuerit, that as We evir difallowit of all dowble deilling, so We loued nocht that flicht, bot wer resolved nevir to do nor consent to any thing, but quhat We wolde approve before pe hoill worlde : And nochtwithstanding of our reiterating of our dislyke pairof, zit wes pe famin most thiftioufflie past our hand, without our knowlege. And thinking fitt to acquent zow with this particuler circumstance, for zour better informatioun, We bid zow farewell : FROM oure Court, att Quhytehall, the 9 Januarye, 1609.

Followis the tennour of,

HIS MAIESTEIS WARRAND direct to the ASSESSOURIS.

TO OURE rycht trustie and weil belouit Coufinges and Counsalouris, THE ERLES OF DUMBAR, MONTROISE, LOWTHEAN ; and our trustie and weil belouit Counsalouris, THE LORDIS PREVIE SEALE, THE CLARK OF REGISTER, THE COLLECTOURE, SIR LUEIS CRAIG.

JAMES R.

QUHAIRAS We haif directit our Aduocat to infist in persute of pe Lord Balmirrenot before our Justice, for his most haynous and detestabill cryme and offence committit aganis ws, our honour and reputatioun, We haif maid speciall choise of zow, in pe foirfaid Tryall, to be Affessouris to pe said Justice : And pairfore We ar to will zow to assist him, and to see justice dewlie ministrat pairin, as ze wald do ws most acceptable seruice : And thir presentis falbe zour Warrant sufficient. GEVIN att Quhytehall, the thryd day of March, 1609.

Followis the tennour of

HIS MAJESTEIS WARRAND direct to my Lord Aduocat, to persew James Lord Balmirrenoche.

TO OURE trustie and weilbelouit Counsalour, SIR THOMAS HAMMILTOUN of Bynnie kny^t, our Aduocat, in pat our kingdome of Scotland.

JAMES R.

TRUSTIE and weilbelouit counsalour, We greit zow well. This haynous offence committit by the Lord Balmirrenot aganis our honour and reputatioun, being so lang conceillit and now laitlie discoverit, movis ws, for the clering of our innocencie, and freithing² owre selffis of thais wrangous imputatiounis quhich We haif hithertill vnderlyne, to geue ordoure for prosequuting his Tryall, befor our Justice, with all regour : And becaus the leift extenuating of pis offence can nocht bot breid in the evill disposit a distrust of his giltines : And We being fullelie auiset by thais of best judgement, heir, concerning the qualitie of pat offence, to find pe famin, insafar as it is done aganis the securitie of pe Prince, a speciall poynt of hie Treffoun and Lesemaiestie ; ffor heirby, nocht only wer We brocht in danger, both in persoun and estait, bot also our honour, credite, and reputatioun, moir deir vnto ws then our lyffe, hes bene by pe fame brocht in questioun : And pairfore, We will zow to vrge the Judgement aganis him, as for a cryme of pe qualitie aboue writtin, that so all exceptioun that may be maid aganis proceeding, aper of collusioun pairin, or in extenuatting the offence, may be removed, that justice may be dewlie ministrat, and our innocencie, so much pairby wrangit, may be heireftir clerit to pe haill world : And perswading our selffis of zour cair, diligence and dexteritie heirin, as ze wald do ws acceptable seruice, We bid zow fairwell. FROM oure Court, at Quhytehall, the nynt of January, 1609.

VERDICT. THE said James Lord Balmirrenoche Confessit the said Dittay, and haill contentis of the writtis foirfaidis ; and thaireftir, the saidis persounes of Affyse removed altogidder furth of Court to the Counsal hous of the said Tolbuith, quhair thay being convenit togidder, fyrst electit and chufit the said

¹ Fr. Tache.

² Freeing, absolving.

George Erll Merfchell Lord Keyth and Altrie, grit Marfchell of Scotland, Chancillar of the Affyfe; and thairefter, reasonit and votit vpoun the poyntis of the faid Dittay; and eftir long reasoning thairvpoun, and being throuchlie refoluit thairwith, re-enterit agane in Court, in prefens of my Lord Juftice and his Affeffouris, and the faid James Lord Balmirrenoch; quhair the faidis perfounes of Affyfe, all in ane voce, be the mouth of the faid Chancillar of the faid Affyfe, ffand, pronunceit and declairit the faid James Lord Balmirrenoch to be Giltie of the treffonabill, furreptitious, fraudulent and fals fteling of his Maieftis hand to the Letter fpecifeit in the Dittay, without his Maieftis knowledge, and contrair to his Maieftis declarit will; and of the treffonabill affixing of his Maieftis finet to the faid fals Letter; and affifting knawin profellit Papiftis in thair treffonabill courfes, to the danger of fubuerfion of Religioune, and overthrow of all trew profeffouris thair of; and drawing his Maieftis lyffe, eftait, Croun of this realme, with his rycht of fucceffion to the Croun of Ingland, in moft extreme perrell, and bringing moft fals and fcandalous imputationis to his Maieftie, both in poynt of honour and Religioune: And of airt and pairt of the haill treffonabill crymes aboue writtin, att lenth contenit in his Dittay aboue fpecifeit,

MARSCHALL, *Cancellarius*.

Quhairvpoun Sir Thomas Hammiltoun, Aduocat to our fouerane lord, askit instrumentis.

THAIREFTIR, my lord Juftice, confulting with his Affeffouris, Declarit to the faid James Lord Balmirrenoch, that thay war nocht to proceed ony forder in that buffines, for the prefent, till thay fould knaw his Maieftis forder pleafour: Bot, in the meanetyme, aduifet him to bethink himfelff (haifing fa horribill ane fentence pronunceit aganis him) quhat caice he ftuid into, wiffing him to lay his compt with the warld, and draw neir to his God.

And thaireftir, gaif commandment to the Capitan of his Maieftis Gaird to convoy his body to his Maieftis waird in Falkland; thairin to be kept in furetie, as he wald anfuer to his Maieftie, vpoun his dewtie and allegiance.

[CURIA JUSTICIARIE, *f. d. n. Regis, tenta in Pretorio burgi de Edr, primo die mensis Aprilis 1609, per D. Will. Heart de Prestoun, Justiciarium, &c.*]

Apr. 1.—The quhilk day James Lord Balmirreno^t being presentit on pannell, to heir dome pronunceit aganis him, &c. the faid Juftice producit the Warrant vnderwrittin.

WARRANT *from his Majesty, for pronounceing DOOM aganist Lord Balmerinoch.*

JAMES R.

SIR WILLIAME HAERT of Prestoun our Juftice, We greit 3ow weill. Forfamekill as James Lord of Balmirreno^t being convict by ane Affyfe, in ane Court of Justiciarie hauldin by 3ow, in our

tolbuith of Sanctandrois, the tent day of March instant, of þe treffonabill crymes contenit in his Dittay and convictioun; wes pairvpoun remittit till preiffoun, quhill our forder Will and plesour wer knawin pairin, concerning him: WE have thairfore thocht meit, be þir presentis, to signifie our said pleasour vnto 3ow, quhilk is,—THAT 3ow with all convenient expeditioun cause fens ane Justice-Court, to be hauldin by 3ow in our tolbuith of Edinburgh, and thair Decerne and ordane the said James Lord Balmirrenot to be taken to þe place of Executioun, and pair to be demanit and execute as a Traitour; his heid to be strikin from his body; and all his landis, heretageis, lordschipis, baroneis, takis, fledingis, rowmis, possessiounis, officeis, benificeis, coirnis, cattell, insycht pleneiffing, goodes and geir, to be fforfaltit, efcheit, and inbrocht to our vse, as convict and guyltie of þe saidis treffonabill crymes: Anent þe pronunceing of þe quhich dome, thir presentis falbe 3our Warrant. GEWIN att our Court of Quhytehall, the xxiiij day of March, 1609.

My LORD OF BALMIRRIENOCHIS DOME.

Apr. 1. OUR said fouerane lordis JUSTICE, be the mouth of Andro Quhyte, dempster of Court, conforme to ane Warrant direct be his Maiestie to him, Decernit and Ordanit the said James of Balmirrienoeche to be tane to the place of his executioun, and thair to be demanit and execute as ane Tratour; and his heid to be strukin frome his body,¹ &c.

DOCUMENTS ILLUSTRATIVE OF LORD BALMERINOCHE'S TRIAL.

I. *EXTRACT from an Anonymous History of Scotland, MS.*²

ANE litill befor this,³ SIR JAMES ELPHINSTOUN, Prefident and Secretar, went wp to Ingland; quhair he was accusit, in presense of THE KING and *Counsell of Ingland*, for heiche Treffoune aganis his Maty, in counterfeitting the Kingis writt, and sending tha famin Letteris of Recommendationis to THE PEAP, by⁴ his Maties knowlege. The quhilk being confessit be him, he was thair disgreidditt⁵ of his honouris quhilk he had befor, as ane off the Counsell of Ingland: And thaireftir, was on the v day of December brocht to Leith; and on the sext day convoyit to Falkland, quhair he remaynit to the 10 day of March, 1609; and thane convoyit to Sanct Androise; quhair, being putt to ane tryall of ane Affyse, was convict: And thaireftir convoyit to Falkland agane; and on the last day of Marche was brocht to Edinbrughe; and on the first day of Apryll brocht to the tolbuyth, and thair, befor the Justice, condemnit as ane tratour, and his heid to be strukin off; bot neather the day nor pleace decernit: Quhairupone, the secund day of Apryll, he is conwoyit bak to Falkland, in waird.

II. SIR JAMES BALFOUR'S *contemporary Account*.⁶

IN this fame mounthe of Nouember (1608), James Elphinstone Lord Balmerinoche, principall Secretary of Estait to his Maiefties, for the kingdome of Scotland, being this yeire challenged, in England, anent some Letters wrettin be him, in his Maiefties name, to POPE CLEMENT VIII. befor the King did atteine the Croune of England; bot he confessed, (simulatly, as was thought by thesse that wnderstood the Courte, and hou matters then went,) to liberat the King of fuche grossnes, being examind by some Priuey Counsellors of bothe kingdomes; that, in anno 1598, he had wrettin to the Pope, in his Maiefties name, for a Cardinals hate, to be bestowed one *Chisolme*, a Scotts man, then *Bischope of Weafone* in France, brother to the Laird of Crounerigges,⁷ in Perthshyre; in which Letter

¹ The terms of the 'Warrant' are repeated here.
⁶ See his *ANNALES*, vol. ii. p. 29.

² Advocates' Library, A. 4. 35. Folio.

³ This is pre-

ceded by the following notice: 'On the aucht day of Nouember, thair wes sik ane earthe quaik, throw mony pairtis of Scotland, as the lyk wes not sein this mony day.'

⁴ Without, past, contrary to.

⁵ Degraded, stripped.

⁷ A mistake; *Cromlix* is the proper name.

(he hauing gottin the Kings hand to it) he styles the Pope '*Beatissime Pater*,' with wther suche phraſes; which almoſt wronged the Kings honor and reputatione, with all the Proteſtant Princes and States in Europe.

His trayell and puniſhment (he being a Scotts Nobleman) was remitted to the Juſtice of Scotland; and he ſent home thither, wnder a guard, from ſhyre to ſhyre; of all wiche the King adwertifes his Priuey Counſaill of Scotland, the 21 of the mounthe of Nouember, by Spotſwood, Archbiſchope of Glaſgow.

After his arrivell in Scotland, he was firſt imprifſond in Edinburghe Caſtle, and from thence removed to the Touer of Falkland; and arraird at St Andrewes, in the ſubſequent yeire; and ſentenced to loſſe his head: Bot, by the Kings ſecrett commands to the Earll of Dunbar, he was againe remitted to the cuſtodey of the Lord Scone, as a cloſſe priſſoner, to be kept at Falkland: And from thence was enlarged, and confyned to his auen houſſes in Angus ſhyre, and Balmerinoche in Fyffe ſhyre; quher he deyed of a feuer, and waicknes in his ſtomache, ſome few mounthes after the death of his arch-enimy and competitor, Ceicill Erle of Salisburrey¹ (after quhome) if aney tyme he had ſuruiued, (as was talked by them that beſt knew the Kings mynd) he had beine in grater crydit with his maſter then euer.

III. *EXTRACTS from the Records of the Privy Council of Scotland.*

Mar. 4, 1609. THE Privy Council, 'conſidering that his ſacred Matie hes ſend down his faithfull and worthy counſellour *the Erll of Dunbar* to be aſſiſtant to this Tryall, the ſaidis Lordis findis it verie meete, neceſſar and expedient, for the gittair auctoritie and regaird to be had to that actioun, that the ſaid Erll of Dunbar be accompaneid with a ſufficient number of the Nobilitie and Counſale; ffor whiche purpois, the ſaidis Lordis hes nominat and appointit David Erll of Craufurd,² &c. to be preſent with the ſaid Erll of Dunbar at the ſaid tryall, commanding thame, in his Maieſteis name, to aſſiſt the ſame tryall, by thair preſence, counſale and adviſe; and ſo to do and performe that which becometh faithfull, worthy and trew counſellouris to do, in a mater ſo heichlie importing his Maieſtie, in his honnoure, fame and credite.'

Mar. 17, 1609. WARRANT commanding the Director of Chancery 'to omitt the ſaid Lord of Balmerinochis name, furth of all ſuche Infeſtmentis, Letteris, writtis and grantis to be paſt and exped the Chancellarie, heirefter, wherein his name formarie hes bene accuſtumat to be infert.'

IV. *EXTRACT from the Earl of Haddington's MS. Collections.*⁴

Mar. 28, 1609. LETTER⁵ from his Matie to the Chancellor, commanding him to ſeaſe the Lord Balmerinois landis, try the rentis thair of, the maner of his purchaſe, and wrongis done be him; to be tryed by indifferent⁶ Counſallouris, that the King might tak ordour, for ſatiſfactioun of thoſe quho war wronged.

V. *LETTER from WILLIAME CREICHTOUN, Jeſuite, [to SIR ANDREW MORAY of Balvaird.]*⁷

RIGHT WORSHIPFULL S^r,

My humble and heartlie dewtie rememberit. I haif hard with extreame dolour, the extremeties to

¹ He died at Marlborough, on Sunday, May 24, 1612, of a complication of dropsy and scurvy. *Sir E. Brydges' Memoirs of the Peers of England*, p. 481.—His other 'arch-enimey' Dunbar predeceased him. 'Vpone Monnonday, fourt of Februar, aduerteiſment came that the Erle of Dunbar wes dead, vpon Wedinsday, threttie of Januar, 1611.' *Haddington's MS. Collections*, Adv. Library.

² Here follow the other names before mentioned, already marked as Assessors and Assise, together with Walter Lord Buccleuch, Walter Lord Blantyre, James Lord of Bewlie (Sir James Hay) comptroller, and Sir John Cockburn of Ormiston, Justice Clerk, who had probably absented themselves.

⁴ Preserved in the Advocates' Library, Edinburgh.

⁵ After a careful examination of the Warrants of the Privy Council, no traces of the original Letter are to be found.

⁶ Disinterested, impartial.

⁷ The envelop of this Letter has unfortunately not been preserved; but, from internal evidence, Sir Andrew Moray of Balvaird seems to have been the person to whom it was addressed.—The original is among the *Denmylne MSS.* Advocates' Library, A. 2, 40.

the whilkis S^r JAMES ELPHINSTOUN Prefident of the Seffioun of Scotland is reduced, for the Letter sent to THE POPE and Cardinalis by Mr Eduard Drummond; and speciallye, becaus the Prefident is so neir to you by alliance. As twiching the Prefidentis Confessioun to haif sent that dispathe to POPE and CARDINALIS, without his Maties consent or commandement, I will not mell me with that; nor any thing what it may meritt; bot, becaus I affistid Mr Eduard Drummond in all that negotiatioun, thinking it to be to the Kingis weill and service, and communicatioun of all the Lettres¹ that was broght for that effairis, I thocht it expedient to informe you of the veritie of all. There was no thing wrought in that negotiatioun, which was not thocht to be for the Kingis Maiesteis service; which was, to procure the Bischope of Wefone advancement to the degrie of Cardinall; to the end, that his Matie fuld haif in the Colledge of Cardinallis, one of his trew and faithfull subiectis, to advance his Maties service, and dasche and stop that which might be to his preiudice; and specially, that thay fuld not excommunicat his Matie, or absolue his subiectis from his obedience, as there was some at that same time biffie to procure it: And therefoir, was alledgit, that fuche rigorous proceidingis in other Popes dayes did not advance, bot hinder the Catholick cause: And therefore, Pope Gregorius XIII. was constrained to grant to the Catholick, to acknowledge and obey the last Q. of England, in all thingis; which was expresse against the Catholick faith.² It was not gevin to vnderstand to the Pope, that the Kingis Maieftie was in any dispositioun ather to come or favour the Catholick Religioun; for the contrair was conteyned expresse in the Letteris,³ saying, that albeit he remaned constant in that Religioun in the which he was nourished, frome his cradle, yit he wald not be enemye and persecutour of the Catholikes, so long as thay fuld remaine faithfull and obedient subiectis to him; as indeed his Maieftie had evir done, vntil the horrible and barbarous Conspiracie of the Goone-powder: ffor in Scotland, to thame of our ordour,⁴ who ar holden the most odious, and persecuted to the deathe be the Ministeris, he did nevir vse more rigour nor to banische thame out of the countrey, and constraine there parentis⁵ to obleis thame, vnder paines, to cause thame depairt. The calumneis of sum passioned writteris, and speciallie of him who anfueris the Apologie or traite, intituled 'TRINO NODO TRIPLEX CUNEUS;' who impropertis to the Kingis Maieftie to wald haif deceaved the Pope, to whome he gave hoip to favour or imbrace the Catholick Religioun, is onlie to disgrace, in what he may, the Kingis Maiesteis self, and some Catholicks whome thay baitt without iust caus, without veritie or charitie; which fuld not be imputed to all Catholickes, nor to the CARDINAL BALARMINE, who is not authour of that booke. Amongst the Catholickes ar many honest men, affectioned to his Majestie service, in all thingis thay may with goode conscience, and faistie of the Catholick Religioun; amongst whome I wald not be the hindmest, as I haif ever bene and falbe to my lyveis end. And heir I leif to truble your worship, with my humble and heartly recommendatiounis redoublet to your goode affectiounis, as to my L. Vicount of Fentoun⁶ your Vncle.⁷ FROM AIGNON, the 27 of Januarye, 1609.

Your worship most humble and affectioned couseing and fervant,

(No address)

WILLIAME CREICHTOUN.

VI. LETTER from SIR THOMAS HAMMILTOUN to KING JAMES VI.⁸

PLEASE YOUR MOST SACRED MAIESTIE,

HAVEING ressaued from the Earle of Dumbar, the LORD BALMERINOES Confessioun of his most heynous offensis, committed aganis your Maieftie, togidder with your Maiesties two Letters, contean-

¹ The words 'and instructions,' added on the margin, in another hand, and deleted. ² Inserted on the margin, in the same hand, 'and sick service, who evir had done it, ather with or without Commissioun, apperis to mereit rather thanks and revaird nor hard traitment.' ³ On the margin, in another hand, afterwards deleted, 'and instructionis.' ⁴ Jesuites and Seminary Priests. ⁵ Blood relations. ⁶ The celebrated Sir Thomas Erskine of Gogar, who killed Alexander Ruthven, at Perth, Aug. 5, 1600. He was created Earl of Kellie, Mar. 12, 1619. ⁷ This seems to prove the Letter to be addressed to Sir Andrew Moray of Balvaird. See his ingenious Letter to the King, Jul. 13, 1608, No. XIX, (14.) of the Collections relative to Gowrie's Conspiracy, vol. ii. p. 323. ⁸ From the Original, preserved in the *Denmylne MS. Collections*, Adv. Lib. A. 2. 40.

ing sum materiall poyntis of his cairiage, in the practeifing of that mischeivous pourpofe, not conteaned in his Confessioun; I have, according to the juſte and wyſe direction of your priue Letters, formed his Dittay, heirwith to be preſented to your Maieſtie, to the effect that theſe treaſonabill crymes, which offered ſo dangerous woundis to your immaculat fame and royall honour, being conſidered be your moſt excellent judgement; that which is imperfyte, in my frame of this Dittay, may be amended by your Maieſties moſt judicious cenſure.¹ I have alſo reſſaued from my Lord of Dumbar the reſolutions of the graue and learned Ciuilians preſented to your Maieſtie, concerning this ſame fact, whairin thay have expreſſed thair ſufficiencie in thair profeſſion and faithfull affection to your Maieſties ſeruice; bot, being vnacquented with the grounds and courſe of oure Criminall Juſtice heir, have leaned to ſum warrands, whairvpon I dar not weill relye: Becauſ, I foreſie that I am to perſew ane man, more ſkilfull to pleade his lyfe nor any that wes broght to the bar in this your Maieſties kingdome thir hundreth yeiris bygane; and who may exſpect fuche aſſiſtance of the beſt of oure lawers, as many vthers offendours, moſt guiltie of hieft crymes, hes fund heirtore: And albeit I think that the ſentence gevin aganis him be his owne conſcience, and vndeniabill treuth of the cryme, confirmed be his owne Confession, ſould tak from him all deſyre of contradiction, and hope of any gude by his defence; yet, knowing it to be my dewtie to be reddie for the worſt which he or his aſſiſtants can abill to intend, I fall be cairefull ſo to prepaire all thinges neceſſar for that perſute, as your Maieſtie, with Goddis grace, ſhall have full ſatiſfaction, by the performance of your royall commandement, in the verie forme and ſubſtance whilk your Maieſtie hes preſcryved. Gif the Judges do that dewtie, whilk in reaſon and juſtice thay owe, and I dowl not will faithfullie performe to your Maieſtie, ſpeciallie, ſeing my Lord of Dumbare² is to be ane ey-witnes of thair proceidingis, whois caire hes bene fuche in directing the firſt pairt of the proces, which lyes to my charge, and exacting accompt of my diligence thairin; that, vſing the lyke with the reſt of the Memberis of this Judgement, as I am aſſured he will, thay will nether get leiſour nor leive to neglect or ouerſie thair dewtie. In my charge, his inſtance ſhall be bot ſpurris to ane faſt running hors; yet can I not deny that his judgement hes auailed to remark and reforme dyuers things to the better. So wiſſing to your Maieſtie, in this and all vther your Royall diſſenis,³ moſt honorabill and happie ſucces; and to myſelf, your Maieſties gracious acceptance of the weak indeuours of ane moſt faithfull hairt and affection in your Maieſties ſeruice, I commit your moſt excellent Maieſtie to Goddis bliſſed protection. ED^r, this 9. Feb 1609.

Your moſt ſacred Maieſties moſt faithfull and moſt bundin ſervant,

S. TH. HAMILTON.

VII. *NARRATIVE drawn up by LORD BALMERINOCHE, containing an Historical Account of the various Proceedings adopted against him, in England and Scotland.*

[SINCE the preceding ſheets were ſent to preſs, the Editor, being anxious to investigate the truth or falſehood of Lord Balmerino's Treason, has purſued as extenſive an enquiry as his preſent limited opportunities permit. It muſt be ſatisfactory to all who take an intereſt in ſuch investigations to learn, that the indefatigable Wodrow has preſerved a Transcript of a Memoir, bearing every mark of authenticity, and which is ſaid by Calderwood, in his MS. Church Hiſtory, to have been prepared by this unfortunate Nobleman, during his exile. Although ſomewhat prolix and verbose, which is common to

¹ This amended draught has been preſerved by Sir James Balfour, and contains very minute and laboured corrections. The King was very partial to ſuch employment, and the crafty Hamilton miſtakes here to the King's vanity, in no meaſured terms.

² The reader has already ſeen how 'earnestly' this Nobleman 'travelled' with the Judges, &c. in the matter of Logan of Reſtalrig's forfeiture; and the corrupt modes which he ſcrupled not to adopt, to gain his ends. See this Coll., vol. ii, p. 292, for another extraordinary Letter of Sir Thomas Hamilton to the King; and alſo Robertson's *Hist.* ii. 223. Hailes' *Memorials of James I.* p. 16, &c.

³ It ſeems doubtful whether this is a *lapsus* for 'buſines;' or whether the word '*designs*' is meant.

all similar compositions at that period, it must for ever set this point of History at rest ; and not being written for the purpose of publication, but professedly for the information of his personal friends, and of the private perusal and instruction of his son, and for his warning, in the event of his entering into public life, it is so much the more impressive, and carries with it an air of candour and truth, ' nought extenuating,' nor ' setting down aught in malice.'—During the search which it was necessary to make among contemporary MSS. the following remarkable passage, which occurs in Anderson's History of Scotland, seemed to be worthy of preservation. ' His freindis and intereist fervantis maid the word go abroad, that the said Prefident not only had a Commission for wrytting of the said Letteris to THE PAIP and CARDINALLIS, bot also that he hade a Remission for the samyn, if ever theiould be querrelled ; as in sum missur appeared ; for he was no wayis ffrayed for the said Sentence, be reason, efter his returning to ward, his imprisonment was enlarged still mair and mair, till in¹ he tuik feiknes and died. Bot for feir of bakcalling and renewing the saidis proces, he was quyetlie buried, no man knawing quhar, except a few only of his awin freindis. And within 3 or 4 yeiris efter, his hail landis and honours was restoi red bak again to his son and children.'²]

THIS LETTER³ and Instructions, written be Sir Edward Drummound, with the rest of that Dispathe, I presented unto his Ma. shewing it was Drummounds dispathe for the Bischope of Vizone. So all the Letters were signed, without asking to whom they were directed, closed and sent to the Archbishop of Glasgou,⁴ to be directed at his discretione. So Sir Edward received them not in Scotland, but they were sent in Monsieur Bethun's packet, least otherwise they might be intercepted. It may be easilie considered how necessar this service was for his Ma. as matters then went, there being small hope of Englands favour ; Effex being then in his triumphe, and Valentine Thomas his proceffe at the very tyme in deducing, in his Ma's prejudice, to disable him in his clame to the Crowne ; and what respect could I haue had then, other then my faithfull duty. For it proving, as it did, verie profitable for his Ma. in such fort, as by directione from Rome, all the Catholicks in England prepared themselves in armes and horses, for maintenance of his Ma's title ; and, at Rome, the Spanishe courtes were crossed. It was reputed by them that truelie loved his Ma. the best service that euer was done hime in that kind ; Likeas Sir James Lindsay's imployment followed after it, and speciall dealing with diuerse Catholicks of England, wherewith the greatest guiders of England being terrified, and Effex taken out of the way, the Earle of Salisburrie, then Sir Robert Cecill, by Lord Harie Howard, now Earle of South-Hamptoune, fought means to his Ma., by Catholicks. They fought means to his Ma., and they were then the surest fort his (Ma.) had there : Likeas HIS MA., in his first Speeche in the Parliament-hous, extant in print, and a printed Proclamatione under his Ma's hand, did not disemble how farre, as a Prince, he was bound to POPE CLEMENT, what great loyaltie and affectione he had found in Catholicks, and ever, whill⁵ that detestable Powder Treason (abominable in God's sight, and detestable and damnable to be remembered and recorded, by all memorie,) his Ma. continued not farre from that same minde, whill the policie of some curious heads, fearing lest his Ma. should have looked more narrowlie in his owne estate and their actions, and knowing his inclinatione to be tickle in these points of Religione, sett him on work to that *Triplici nodo triplex cuneus*, which procured that answere of TORTUS, Bellarmin's Chaplaine, unknowne, as I am crediblie informed, to Bellarmine, and not unknowne to some states-men ther, to exasperate his Ma. not onlie against the Court of Rome, and his owne subjects in England, but to vouchsafe his charitie upon me, against whom their malice, although not deserved for any particular of my owne, is weill enewgh knowne. Their malicious intention, thus founded, was weill fecounded by the malice of my enemies at home, the insolencie of some of the Bishops, and ambition of ane, of whome I had deserved better. The Plott is secretlie contrived, that I shall be brought to a Confessione of it—his Ma. to disallow it—and, consequentlie, my undoeing.

¹ He is said, by *Calderwood*, to have died in the end of May, 1612. See No. VIII. of this Appendix. ² *Anderson's MS. Hist. of Scot.*, Adv. Library, Fol. 652. ³ A copy of the Letter to the Pope precedes this Memorial.

⁴ James Beaton, second Archbishop. ⁵ Until.

There came never anie thing of this to my knowledge, before I came to St Albans, in the beginning of October 1608, the verie night before I come to Roystoun to his Ma. The advertisment that I had, was, that I had procured Letters, unknown to his Ma., under his hand, to THE POPE, whereby he had promised, that how soone he should come to the Crowne of England, he should either declare him self Catholick, or at least he should grant a toleratione to all Catholicks within his dominions; and had procured to make the Byshope of Vaizon a Cardinall. The last part, because it was true, I thought it not to be denied; but the first, which was alluterlie false, I refused.¹ At my coming to Roystoune, Sir Alexander Hay, (in whom I repofed as great trust as in my self,) having formerlie perswaded me, most trateroufflie, that his course of accepting to be secound Secretarie,² which at first I disliked, was a plott of my enemies, to his prejudice and mine both; and so, had perswaded my most assured and worthie friend Mr Thomas Murrey of his h(ighness) affection to me, which I did over creduloufflie beleave. Coming to me, I compleaned that I was wronged, in so much that I had not gotten more tymous wairning of their calumneis and his Ma^s discontentment against me;—excused himself, that he had sent me a packet, but that (I) had missed it be the way;—that it was a mater that I needed not to care fore, feing his Ma. desired no more, but to know the truth; and would not be discontent, if, in the point of his Religione, he were not ingadged. So, I confessed the simple truthe. He, in the meane while, had his dailing, unknowne to me, with the Bishop of Glasgou, who incensed his Ma. that, so long as I was officer,³ their state could not be raised:⁴ And having assayed manie other means to disgrace me, could effectuat nothing. Having the authoritie of the greatest there to concurre to my overthrow, they did so dispose his Ma. as, without anie shew of discontentment, he askes of me Sir Edward Drummound's Dispathe, and specialie, of that Letter to THE POPE. I could not denie that which was weill knowne to his Ma.; and that which was contained in Tortus book, was not farre different from the truthe; for the words are, (speakeing of his Ma.,) *Literas humanitatis et officii plenas scripsit ad PONTIFICEM MAXIMUM, quibus præter cætera rogavit, ut ex suis subditis aliquis Cardinalis S. R. E. crearetur.* But his Ma^s promisses of conformitie or to alteratione of Religione are not ascribed to my Letter, but to the promisses of some of the Ministers. Nixt, his Ma. asked, 'if ever he had consented to call THE POPE his *Father*?' I granted that he still refused—and in that, I had presumed, for the good of his Ma. service, after his Ma. had subscribed the Letter, to cause Sir Edward adde the Pope's ordinarie stiles; wherin, if his Ma. conceived anie offence, I was to crave his Ma. pardone to be disfavowed in that, and to cleare his Ma. so farre as anie would tuiche him therewith.

This past in Roystoun, on Sunday, in the morning, before Sermon, betuixt his Ma. and me, privatlie, in his withdrawing chamber. Sir Alexander Hay, who had still his practises with the Bishop of Glasgou, having learned of his Ma. how farre I confessed, advised his Ma. that my Confessione should be retreated,⁵ in the hearing of some others: And, to the end that I should not suspect their intentione, at my

¹ Denied. ² It is difficult to get at the truth of State intrigues, and to detect the real causes of such a change as that referred to by Lord Balmerinoch in his interesting Narrative, even at the time of their occurrence. His Lordship is, no doubt, very particular in his details, which are likely to be correct; for his Narrative was evidently intended for the perusal of those who must have had the best opportunities of knowing the facts. In a valuable Collection of State Papers, preserved in the General Register-House, Edinburgh, transcribed by Sir Thomas Hamilton (Earl of Haddington,) there occurs a transcript of the original Warrant of Sir Alexander Hay's appointment to the Office of Joint-Secretaryship, in the following terms.

'HEAVEING choissing MR ALEXR HAY to be on of our Privie Counsell of that our kingdome; and thinking it no way fitt that he sould still attend ws heir at Court, for Scoittis dispatchis, as deput to ony wther, We have thairfoir joyned him in office with the Lord of Balmerinoch, our Principall Secretar, (quho being enforceid, be his greitt imploymentis in our service, to continew thair, for the moist pairt,) We intend to have the said Mr Alexr ane attendar and resedentiare heir at Court, for the better dispatche of the effaires of that Kingdome. AND our plesour is, that yow caus tak his oath, as Secretarie wnto ws. Qubairanent thir presentis salbe your Warrant.' [JAMES R.]

To our rycht trustie and weilbeloveit cusine and counsallour, the Erll of Dumfermling,
our Chancellor of that our Kingdome of Scotland.

³ Secretary of State. ⁴ Episcopacy could not be restored. Balmerinoch had obtained large grants of Church Lands, &c., and it was, therefore, his interest to preserve matters in their present state, for fear of a resumption of these livings taking place, which would thus strip him of a large portion of his income. ⁵ Rehearsed, reiterated; not retracted, which at first sight it would seem to import.

fecound Examinatione was present but Sir Alexander Hay, whom yett (as God judge me, I trusted as my self.) There I confessed, before his Ma., as befor, that his Ma. ever disaffented to yeild the Pope any stiles; and, at the subscribing of the Pope's Letter, I acquainted him no farther, but (in) generall, that it was to Sir Edward Drummond's Dispatch, anent the Bishop of Vaizon. That I caused Sir Edward add the stiles; and for that, upon my knees, most humblie I craved his Ma. pardone. Then, be his Ma. countenance, and some rounding¹ that past betuixt his Ma. and Sir Alexander Hay, I beganne to be in some suspicione. The King commanded me that I should repair to Londone,—remaine there whill I knew his pleasure—and in no case to repaire to the Queen's Court. Immediatlie, Sir Alexander Hay, the Bishops of Glasgowe and Galloway conferred with the King, anent my Confessione; and were discontent that I had not presentlie sett it down, under my hand; yett, fearing least I should have suspected their policie, they would not then urge me anie farther.

The nixt Mounday I raid to London. Sir Alexander Hay and the said Bishops raid before me; and Sir Alexander went to my Lord Salisburie, (and) acquainted him with all was past. Then begane I to suspect the course, and to repent me I had gone so farre. I sent to the Earle of Salisburie, desired I might have an assignatioun to come to him; who did returne answer, that he was advertised from his Ma. that I was commanded to keep my house; and so it was not fitt I should come to him. Thus did I mistake his Ma's command; for in that (I) was forbidden to repair to the Queen, then lying at Hamptoun Court, I thought all other places, within Londone, were free to me. Likeas, I went to Lambeth, to the Archbishop of Canterburie,² and to Whitthall, to the Earle of Dumbar; the said Sir Alexander allwise in companie with me, never giving me notice of his Ma's pleasure to the contrarie, whill³ I had it of the Earl of Salisburie; of purpose, as I have since found it, to exasperat his Ma., as a contempt not ordinarie there, where his Ma's commands are verie ceremonioullie observed. But, as God shall judge me, I never heard anie other command from (his) Ma. but to attend his pleasure at Londone, and not to repaire to her Ma's Court.

Wedinsday thereafter, Sir Alexander Hay, having repaired to his Ma. comes with a Note, under his Ma. hand, commanding me that I should sett doune in writte the passing of that Letter to the Pope, and the circumstances, so far as I could remember. Beginning then to apprehend the buffinesse, and having gotten warning of his Ma's displeasure, and the advantage my enemies presumed they had gotten, I become more spairing; and by my Letters to his Ma. desired that I might be excused that I could not sett down the particulars of that, under my hand, after so long a tyme; except that either I were in Scotland, where my papers might bring me to remembrance, or that I had mett with Sir Edward Drummond; begging his Ma's patience, whill³ I might fend for him; which I offered to doe with convenient speed, who should bring with him the just copy of that Negotiatione, and should give his Ma. and all the world satisfacione of the truthe. But that was not intended; but contrarie to the truth, to big upon me an unjust imputatione; wherof the production of the Letter would have made me cleare.

THE COPIE of the LETTER sent to HIS MA. the 12 of October (1608.)

Please your most sacred Ma.

IN these particulare points your Ma. did demand of me, so farre as I can remember, I anfuer for your Ma's satisfacione; That your Ma. (of my knowledge) did never command or direct any Letter to be writtin to THE POPE, neither was I present when Sir Edward Drummond moved your Ma. for any such Letter. That your Ma. did never stile your self 'FILIUS' in any Letter, but to your Mother-in-law, the Queene of Denmark. That your Ma. did never writt 'FATHER' or 'HOLINESSE' to any. As to the Letter written be your Ma. to POPE CLEMENT, although I doe remember that there was some such Letter, conteaning nothing but a Recommendatione of the Bishop of Vaizone, I humblie crave your Ma's pardone, if I can make no declaratione how it was past, whill Sir Edward Drummond, who was the author, bearer and procurer thereof, be first examined; whom I am about pre-

¹ Private communings; whispering.

² Archbishop Bancroft, formerly Bishop of London.

³ Until.

fentlie, with your Ma. permissiōe, to send for, by whom the whole circumstances of that mater shall be clearlie detected. For I protest before God, for the present, I cannot perfitelie remember how that mater was past; most humblie craveing your most sacred Ma. (since I am most willing, for your Ma^s obedience, to clear your Ma. of that before all the world) that in remembrance of my loving and affectionate humble service, yee will be pleased to accord me the tyme and meanes, wherby the veritie of my part in all that mater may be manifested; which as I doe expect, out of your Ma. princely accustomed clemencie, so shall I ever pray, &c.

COPIE of the LETTER to HIS MA. the 15 of October 1608.

I DOE remember that I moved his Ma. divers times to have written to THE POPE, both to have taken notice of his kindnesse, and to have recommended the Bishop of Vaizon; and that his Ma. did refuse, onlie for that he could not, with safe conscience, yeild him these titles of 'Father' and 'Hollinesse,' which he¹ did allow: But if otherwise the Pope would have accepted his Ma. Letters, with the Titles of other Temporall Princes, he would have written him. As to the circumstances of passing of that Letter, I protest before God I cannot call them to my memorie; but by conference with Sir Edward Drummound, and with such as served me at that tyme, and with such other admonitions as I will find in my own papers, I hope I shall give his Ma. satisfactione.

HIS MA. not content to admit my delayes, remembring the circumstance of that negociatione better then I, he setteth down a number of interrogations, under his hand, with a Letter to the Counsell of England, commanding them to examine me. Being brought before them, I at first declined their Judgement, till they declared that they would not take upon them to judge me; but, following his Ma. commandement, to examine me and remitt me to my ordinarie Judge. In end, to all the particulars, I answered, in such sort, that they could not mend themselves, nor bring me in compassse of any Law. The Earle of Dumbar, the Lord Skoone and Sir Alexander Hay present.—Thereafter his Ma., being discontented of my unwillingnesse to cleare him, and to burthene my self with the fault, yea to take upon me some points (which his Ma. affirmed he remembered,) which, in truth, I could not call to my memorie, the Earle of Dumbar directed the Lord Burlie² to me, a verie favourable and fast Nobleman, and who had, immediatlie before the Earle of Dumbar's parting out of Scotland, renewed a freindship between him and me, which was the greatest cause of my repair to Court, that it might be confirmed there, before the Queen's Ma.; and his Ma. satisfied, by the Earles meanes, of whatsoever hard opinion he had conceived either against the Chanceler or me, by suggestione of the Bishops. His credit from the Earle of Dumbar was to advise me, for my own good, since it was confessed by me that such a Letter was purchased, and that his Ma. had denied it, that rather, ere the imputatione should lye upon his Ma., I should take it upon me. When I obtended the perrell of my estate, his Ma^s discontentment and their malice, the Lord Burlie gave in this assurance, that my life, estate, nor Ropar's Reversione should be in no dangere. As to my Offices, to leave them to his Ma^s dispositione; whether he would take them from me or not. I finding manie enemies there, and being straitlie kept, I enter, be the Lord Burleyes meanes, who from the beginning has ever kept ane honest part to me, in a more particular freindship with the Earle of Dumbar. And, because the Lord Skoon and Sir William Hart had diverse tymes travelled with me to have married one of the Earle of Dumbar's sister-daughters, I was content to give him my eldest sone to be disposed upon in marriage at his pleasure, to give the Palace and Park of Hallyroodhouse; and if he desired Restalrige, he should have it for the price I bought it. These conditions, as the Lord Burlie told me, pleased him, and so he would take upon him my protectione, if I would follow his advice, which I was content to do, knowing what power he had, and how easie it was to him to calme all stormes; allwise desiring him to carie his affectione to me so secreitlie, as the Bishops, Sir Alexander Hay, the Earle of Wigtoun and others my small friends,

¹ Viz. the Pope.

² Sir Michael Balfour, created Lord Balfour of Burleigh, in Kinross-shire, Aug. 7, 1606.

should know nothing of it. He was so diligentlie allwise attended be some of these, that after he had appointed me diverse meetings, he could never meete with me; alwise, he assured me what ever the Lord Burlie should say, in his name, I might trust it, and he would performe the same. And hear-upon I desire my friends to enquire the Lord Burlie, if this assurance was not given be the Earle of Dumbar, that my life, my estate, and Ropar's Reversione should be sure; as for my Offices, they should rest in his Ma. dispositione; and it might be I would not want them.

The Earle of Dumbar thus entered in conditions with me; and the Lord Burlie putt in trust, for him and me both, for all conditions on both parts. The first directione was, that I should writte a Letter to him, desiring he should convene the Earles of Salisburie, Northampton and Suffolk, befor whom I should grant all the King's Articles; and thereafter writte a Letter to his Ma. to the same effect. He willed me to use these three Noblemen to strengthen his credit, that they being engaged to be my friends, he might the more easilie worke that he had undertaken; and all the said Noblemen promised upon their honours that they should be my friends, and would joyne with the Earle of Dumbar to satisfie his Ma. All which I performed. Then was I delivered in the Earle of Dumbar's keeping, who promised that I should allwise be his prisoner; and at my returning to Scotland I should be waired in the Castle of St Andrewes. By this advise, I wrote a becomming in his Ma. will, which the Lord Burlie gave him. He returned me an answer with him, that his Ma. was weill pleased with it, and all would go weill; onlie, I was desired to adde this, that I would renew the same judicillie, when I should be required; which I did.

THE COPIE of the LETTER to HIS MA. 24 of October 1608.

Most gracious and dread soverane,

It is over great presumptione to offer to your most princelie eyes these lynes, from the hands which have so highlie offended your most sacred Ma.; but, because it was continuance in my offence to labour to obscure the cleare soule of your Ma^s unspotted integritie, and that the imputatione of my misdemanour, which I justlie deserve, may lye upon my self, and your Ma^s innocencie cleared to all the world, I have truelie sett down here, how that Letter to POPE CLEMENT, wherewith your Ma. is fallie taxed, was, without your knowledge, past your hand, amongst other Letters which I did present to your Ma., by the abuse of your Ma^s trust, whereof I was not worthie. In the year of God 1598, at the earnest sute of the late Archbishope of Glasgow,¹ your Ma^s Ambassader then resident in France, the Bishop of Vaizon and divers others your Ma^s weill affectioned friends and servants, both in Italie and France, who were verie earnest to have had some correspondents betuixt your Ma. and the Pope. Sir Edward Drummond being directed by them in Scotland, to follow that buffinesse, I presumed divers tymes to move your Ma. therein; and did offer to your Ma. the frame of such a Letter as I would have signed be your Ma. to the Pope; whereunto I never found your Ma. so unwilling as your Ma. did altogether refuse to writte; denying ever to writte anie Letter, with these stiles which the Pope did assume to himself. But I being in my too great zeale, and assured hops were given me by greater statesmen then my self, of the benefite would come to the strengthening your Ma^s title,² by the Pope's friendship, overcome with weaknesse, and presuming that the successe of my true intentione should efface the memorie of my offence, I caused draw up a Letter, with the said Sir Edward's hand, as from your Ma. to the Pope; but verie spairinglie, onlie containing thanks for his kindnesse and bygaine favour, with Recommendatione of the Bishop of Vaizone, your Ma^s native borne subject, to be made a Cardinall. To the which Letter, among others of that kind, written to the Duke of Florence, Sawoy and some Cardinalls, in favours of the said Bishop, (all presented be me unto your Ma. one day in the morning, when your Ma. was going a hunting, in haste,) your Ma. did sett your hand: For your Ma., finding the Letters all in Latine, and the Bishop of Vaizon's Recommendatione the subject, and having formerlie refused to writte to the

¹ James Beaton, the second archbishop of that name.

² To the Throne of England.

Pope, did nothing suspect that anie such thing should have been offered to your hand. And after your Ma. had signed it, Sir Edward Drummond did adde the Pope's files, both in the beginning, and above your Ma's subscriptione in the end of it. Some Letters, two or three as I remember, signed be your Ma. to some Cardinalls, containing nothing but thankes and recommendatione of the said Bishoppe, were given to the said Sir Edward cloffe, caschetted, to be directed, by the Bishop of Glasgow's advice, to such of them as were, in his judgement, best affected to your Ma.: And I did hear, after, two of them were given to Aldobrandine and Bellarmine, and the thrid to Cajetan, who was Protectour of the Scottish Natione. Here was my first fault of preposterous zeale, weaknesse, and presumptione. My next was fear of your Ma's displeasur; becaus the late Queen's Ambassader having expostulated for your Ma's dealing with the Pope, and I being asked therof, be your Ma., I did pertinaciousslie denie that there was anie such mater; and for your Ma's better satisfactione, I moved Sir Edward Drummond to returne into Scotland; who, being examined, did at my desire justifie my deniall, and that he had caried no Letter for the Pope. I pressed him, verie instantlie, at his returning, to labour to reteir the said Letter, and to destroy it, fearing least the knowledge of it hereafter might breed your Ma's discontentment, as it hes done at this tyme, to my exceeding great sorrow. And because my attestatione in this kind, which I protest, before God and his angels, is true, and yett will not be a sufficient liberatione of your princelie honour, which is dearer to me then my life, I am not hearby to beg anie pardone, but that your Ma. in your most rare and princelie wisdom, will take such course, but¹ any respect unto me, whereby your Ma's innocencie and my offence may be made knowne to the world. And so, in all humilitie, attending to suffer what your Ma. will impose, and to obey whatsoever your Ma. will be pleased to command, I pray God grant your sacred Ma., according to the sinceritie of your heart, a true and just constructione of all your actions befor all the world, and, after a long and most prosperous raigne, eternall felicity.

COPIE of my becomming in Will, 3 November, 1608.

Please your most gracious and sacred Ma.,

As at the verie first I did ingenously Confesse my offence, and have particularly sett down under my hand the whole circumstances of it, and likewise answering to the severall interrogatours whereupon I was examined, I have in everie point declared the veritie; so, still continuing most desirous that your Ma's honour should be free of any such imputatione, and my offence without anie longer delay knowne to the world, doe, by these presents, in all humilitie, freelie and absolutlie submitt my self, and become in your Ma's Will; that since onlie against your Ma. my offence is committed, so your Ma. will irrogat unto me such punishment as in your true justice and princelie clemencie I have deserved. And this my becomming in Will, I will renew, or reiterat in Judgment, or without, so oft as I shall be required.

AFTER this, the Earle of Salisburie causes be drawn up, upon his Ma's Interrogatours and my Answeres, a forme of a Depositione, making everie particular deid to be Treafone—that I had traterousslie conspired with Sir Edward Drummond to deceave the King, and steall his hand to a Letter to the Pope—that I had traterousslie caused put the caschett to it—and that I had commanded Sir Edward, above the King's subscriptione, to writte '*Sanctitatis v. obsequentissimus filius*,' so like the King's hand as could be—and so, I had made him falslie to counterfoote the King's hand. This Depositione being offered to me to subscribe, I refused (at) the first; because it made that to be Treafone and treasonable which was not; since the Letter contained nothing but meere complements, and a recommendatione of a Scotishman to be a Cardinall; and that ane Officers trust was greater then to procure a common recommendatione; and the putting of the Caschett to it was lesse treasonable; seing by that Letter his Ma's honour, nor state, nor Religione, was not harmed, nor no damages nor inconvenience had followed upon it. The last part was directly *crimen falsi*; and as I had not deponed it, so it was not true. Att this meeting were present the Chancellor of England, Salisburie, Northamptoun, Suffolke,² my lord Duke

¹ Without.

² Thomas Howard, Earl of Suffolk. He was Lord Chamberlain at the time of the Gun-

of Lennox, the Earle of Dumbar, Sir Thomas Smith Clerk of the Counsell, and Sir Alexander Hay.— My answere to the last, the Chancellor granted to be true, and that it was but a mistaking; and so it was mended, and that article delected, in so farre as it concerned the counterfooting of the King's hand. As to the first, my Lord of Salisburie answered me, that what they had sett down was onlie to give his Ma. satisfacione; and it was nothing to me, since his Ma. had accepted me in Will, was to deale grationlie with me, and not to proceede judiciallie with me any more. Whatever might please his Ma., and in his Ma's opinion give the world satisfacione, and clear his honour, since it was not to harme me, it was unfitt that I should refuse his Ma. to give his Ma. what should please him, feing it was not to prejudice me. And upon this assurance, and the Earle of Dumbar's former Declaratione, that the King had weill accepted of my becomming in Will, and that my not subscribing of this Depositione hindred the progresse of the King's answere to TORTUS booke, wherof this Depositione behoved to be a part, I sett my hand to it, in prefence of the Noblemen and others above written, who, I am sure, upon their honour, will not denie it. And hearupon I desire my friends to inquire the Duke of Lennox, the Earle of Dumbar, and Sir Alexander Hay.

LAST, the King's Ma. having concluded to returne me in Scotland, because all this matter was carried with a great shew (as was said to his Ma.) to cleare his honour, but in effect to disgrace me, and make me odious, I was brought before the Counsell. (Not only) all the Noblemen, both English and Scotish, (and) all the Judges were brought, but all the Court, so many as the Counsell-Chamber could contane. *The Chancellor* declared the cause of that solemne meettinge, made my Depositione to be read, and with a long harrange and many reasons did aggravat my offence, to his Ma's great praise; and in the end, remitted the matter to Scotland, to be judged there. Nixt, *the Earle of Salisburie* had as long a discourse, all to disgrace me, to flatter the King, and to shew his eloquence. Thridlie, *the Earle of Northampton*, to testifie his zeale as a witnesse, how alien his Ma. was from anie dealing with the Pope, these 18 years he had kept correspondence with his Ma., damned all my proceedings. I had wairning the night before that I was to be so used, as the Lord Burlie,¹ who had beene mediator betwixt the Earle of Dumbar and me, being departed to Scotland, I was forced to fend for James Bailzie, a verie trustie young man, to whom I am infinitlie bound, and who (nixt my Lord Burlie) was verie privy betuixt the Earle of Dumbar and me; whom I desired to shew his lordship, that I understood that I was to be brought before the Counsell the nixt day, and that they were to rail upon me. That he should not think it evill if I should say, for my owne defence, that which I would make good; that there was no point which they were to lay against me, which I would not answere. He returned James Bailzie to me, with this answere, earnestlie praying me, since that was the last that in that earand was to be done, not for my prejudice, but for his Ma's honour and satisfacione, that I would answere nothing; but in all humilitie acknowledge my offence, cleare and liberate his Ma., renew my becomming in Will, and desire my Lords of Counsell to become intercessors, that his Ma. would end the proceffe, be his Declaratione. This would be most acceptable to his Ma., who would be behind a peece of tapestrie,² and if I played my owne part right, his Ma. would be best pleased. Which I also obeyed.

The Chancellor, in Counsell, produced his Ma's Warrant, declaring his Ma's Will, that I should be no more one of that bodie. Which Declaratione of his Ma's Will, having no Convictione nor Warrant, but my becomming in Will was ane acceptatione of it; so, having declared a part of his Will, by no law, thereafter, he might have proceedede judiciallie with me. Immediatlie after the Counsell, the Earle of Dumbar sent James Bailzie to me, to give me thanks; and to shew how weill his Ma. was pleased;

powder Plot, and was, with Lord Mounteagle, the chief means of detecting that remarkable Conspiracy. See *Carte*, III. 757—*Winwood's Memorials*, II. 171. Suffolk was turned out of his office, in 1618, for embezzlement, &c.

¹ Sir Michael Balfour, Lord Balfour of Burleigh.

² This was by no means an uncommon practice of 'his most sacred Majesty,' and conveys no favourable idea of the course of his proceedings, in this remarkable transaction. It reduces the whole matter to a mere stage trick, and a solemn mockery of the highest Tribunal and personages of the Country.

and that his Ma. would have that in writt, which I spake. Which also I fett doune. And because there was some words his Ma. (as he affirmed) desired to be added, which he affirmed I spake,¹ the words written with his hand, and brought to me be the said James Bailzie, I infert with my hand and subscribed; and send them to him, with the said James. And hearupon I desire, if need, that my friends may inquire the said James.

THE summe of the Counsell of England's proceedings, on Sunday, the 13 of November, 1608.

THE said day, in the after noone, the whole Counsell being conveyened in the Counsell-chamber, the whole Judges, and all the Noblemen, both Scottish and English, that were at Court, THE LORD CHANCELLER² beganne a verie grave speech, wherein he did earnestlie require audience and attentione, in respect of the great consequence of the mater he was to speake of. It was so much the greater, that it was a noveltie wherof he had never heard, nor (to his knowledge) in all his books read of any the like president, of before. It was of great consideration, because it did touche the Kings most sacred Ma. and royale persone, both in his honour and his safetie, wherein did consist the safetie of the whole estate. The mater was also weightie, in respect of the persone whom it did concerne; a Nobleman of Scotland, raised to that estate by his Ma^s favour, and a Member of that board. As to the mater, because he might perhaps faile in the relating of it (which he was very unwilling to doe, in a mater of that kinde and weight,) therefor he desired the Instrument, containing the Lord Balmerinoch his Confession, and signed with his hand, should be read. The same being read, and acknowledged be the Lord Balmerinoch to be his owne Confession, then he said to the Lords of the Counsell, that he did perceave, by their countenances, that they all did looke on that mater as if it were a mater wherein they were to give their sentence and judgement. But he prayed them not to thinke so; and that he would releave them of that burthen; because neither were they conveyened to that end, neither was the said Lord Balmerinoch brought down to make any answer; because that mater was transcendent, and of a greater weight than that board, or any Counsell board, could judge of it; but, because it was a fact committed in Scotland, be a Scottishman, before his Ma^s happie comming to the Crown of England, they would not doe that prejudice to Scotland, that was as ancient and free a kingdome; as they are so weill governed, with so many grave and ancient Noblemen; whose Nobilitie is continued and reserved with a farre greater respect and antiquitie nor their owne; so wise a Counsell of Estate, so learned and grave Judges, as in all these perfectionis they were nothing inferiour to them. Onlie, for the present, he would point out and offer to their considerations, that were present, some heads of that Confession, which had been the consequents of that fact; and so remitt it to the own Judgement,³ and the Lord Balmerinoch to his own answer before his owne Judge. First, he desired they should attend the tyme when his Letter was written; to witt, when his Ma. was, in possessione, King of Scotland; in his title and undoubted royall descent, apparent of England. How this fact might have perrelled him both the one and the other, if it had been knowne that his Ma. had had any dealing with the Pope; for, in Scotland, the most of all the Nobilitie, gentrie, and whole bodie of the kingdome, being of the Religione they presentlie professe, would not have failed to have made insurrectione, if they had knowne that his Ma. had any dealing with the Pope. In England, the late Queene, of happie memorie, being a Prince verie jealous and narrow looking in all his Ma^s actions, if she had knowne that his Ma. had had anie course with the Pope, she would have quicklie objected unto his Ma., that since he was taking a forane course to strengthen him, speciallie with these who had so often futed⁴ her life, she would likewise take another course, for her owne preservation; and so might have endangered his Ma^s just clame. Like as, in effect, the same dealing comeing to her knowledge, she did incontinent send her Ambassader, and did most bitterlie expostulat with his Ma.; and the dealing, at that time, was denied; and so smoo-

¹ Balmerino was thus led forward by one piece of artifice after another, until, at length, he was so completely in Dunbar's toils, that retreat was impossible. ² Sir Thomas Egertoun, Lord Ellesmere, afterwards (1616) created Viscount Brackley. ³ To the natural and proper Court or Jurisdiction, in Scotland; where he would be tried by an Assise of his peers. ⁴ Pursued.

thered over. Nixt, he did mightilie aggredge¹ the great inconveniences that had fallen out, all (as he did affirme,) upon the dealing mentioned in that Confessione; first, that it had given occasione of ane infinit number of scandalous books and pamphlets to be written, wherin his Ma. was verie bitterlie taxed; and speciallie, he did there produce *Bellarmines* late book, under the inscriptione, which he did read, of one whose name being TORTUS, he did allude therunto that he was alwise *tortus*.² The parcell³ he read, was the fault found with Pope Clement's Breave; wherby he did command the body and estates of this kingdome of England not to admitt or receave a King, in case of the Queen's decease, but a Catholicke; and so did exclude his Ma. from his iust title. To the which clause, contained in the book of *Triplici nodo triplex cuneus*, Bellarmine made this answer, that by that Breeve, the Pope did not meane to exclude the King, because the name '*Jacobus*' was not mentioned in it; and withall, the Chancellor did observe, in the words he read, that *Bellarmino* did give the author of the book a lye, in the word '*mentitur*;' nather could it be meant of his Ma., because his fervants and Minister had given great hopes to the Pope, that '*non erat valde alienus a fide Catholica*;' and thereafter, '*quia etiam Rex ipse scripsit ad Pontificem ipsum, Literas humanitatis plenas, quibus, præter cetera, rogavit ut aliquis a Natione sua Cardinalis S. R. E. crearetur, per quem facilius cum Pontifice res suas tractare posset*:' Which words being conforme to the Lord Balmerinoch's Depositione, the same had given occasione of the writting of that booke; in manie parts wherof his Ma. was bitterlie tuiched. Nixt, upone the occasione, contained in that Depositione, did grow all the Conspiracies that, since his Ma^s commeing to England, had fallin furthe; for by this dealing with the Pope, unknowne to his Ma. great hopes were given to the Catholicks, that when his Ma. should come to the Crowne of England, his Ma. should either declare himself a Catholicke, or, at the least, the Catholicks should have a toleratione of Religione, within his dominion; wherof, finding themselves disflappointed, they did move their Conspiracies. For scarcelie was his Ma. warmelie sett down in this kingdom of England, when Watfone the Preist and a number of his adherents did attempt against his Ma^s royall persone; for the which a number of them were aprehended and punished. Nixt, upon it came the devilish intencion and practife of the Powder Treafone, wherin was intended the taking away of the King, Queene and their posteritie, the Counsell, Bishops, Nobles, Judges, Gentry, and whole bodie of the realmes; for the which a number were punished, and a great many, in his Ma^s clemencie, spaired. Therafter, that none should mistake their proceedings, in the tryell and examination of the Lord Balmerinoch, he declared all the points therof, adding, that although it was a case might receive judgement in England, in respect it did concerne his Ma^s persone, which hath so many priviledges that it draweth all Judgments⁴ after it; and that the Lord Balmerinoch that was to be judged was present, and so might receave his judgement there, yett such was his Ma^s respect to his ancient native kingdome of Scotland, and they were so farre from encroaching upon the liberties therof, and knowing the tender regarde that the Nobilitie and Estate would have to a mater that did so highlie concerne his Ma.; after a long reiterated discourse, in the praise and honour of that kingdome, Counsell, Nobilitie and government of it, declared, that they would remitt the mater to receave judgement there.

NIXT, THE LORD TREASURER⁵ begane a verie grave speech. After the dew commendatione of the Lord Chancellor, that had spoken before; that he was verie sorie to have occasione to speack of a mater of that kind; but since it did concerne, so highlie, the life and honour of his most sacred Ma. (whose life was dearer to him nor his owne) he should be thought verie undutifull, being so manie wise bound, if he were silent in it. There, having given his Ma. his owne dew praise, at great length,⁶ he did next adde that he was sorie to speake of it, in respect of the persone whom it did concerne,—a Nobleman, by his Ma^s favour, a Counsellor of State, yea more, a Secretarie of State, and one against whom, his deutie reserved in this, he would be loath to have spoken. The fume of his speech grew

¹ Aggravate.² Crooked, perverse.³ Portion, passage.⁴ Jurisdictions, Tribunals.⁵ Sir

Robert Cecil, Earl of Salisbury, Principal Secretary of State. He succeeded to the office on the death of Sackville, Earl of Dorset, in 1608.

⁶ Well knowing his Majesty to be behind the tapestry!

to that same end of my Lord Chancellor's former Speech, that his Ma^s dealling with the Pope might have breed him, in his owne kingdome, disobedience, and done him prejudice in his title to England; that if his Ma. had beene of the counsell of writting of that Letter to the Pope, he would affirme that he had bowed his knee to Baal; being desirous to establishe, for his affaires, ane Advocat at Rome. Nixt, by the words of Bellarmin's booke, then produced, he shew, that the Pope took upon him to declare the Crown of England elective; becaufe, by the words of the Pope's Breeve, the estate and bodie of England were commanded, first, '*non admittere*;' next, '*non instituire, nisi Regem orthodoxum et Catholicum*'—so the heretable descent of the Crown of England was taken away, and behoved to be holden in almous¹ of the Bishop of Rome; that he would not be content to be Bishop of Rome, but would have all Europe at his dispositione. And, in another place of the booke, he shew ane conclusion more offensive to his Ma.—'*ergo REX JACOBUS neque est Catholicus, neque est Christianus.*' That, for himself, he did never say so much of any Catholick; and that he did verilie beleave that a true Catholick was *Christianus*. Nixt, he fell out upon the office of a Secretarie, the great credit and trust thereof; that in a Secretarie's breast is laid in store, the treasure of all the secrets of the kingdome; that *fides* and trust is of that nature, that *fides quæ semel accedit nunquam revertitur*;—that he feared, in tyme to come, his Ma. behoved ather to have no such officer, or ells divide the trust of maters of no importance to one, and common affairs to another;—that of a King's hand-writte, if it may be caried by² the knowledge of the Prince, is more dangerous nor ane army of tuentie thousand men; becaufe the one may be fore-seene, the other not. Nixt, in the nature of the fact, he compared the King's Seall with his hand-writt; that the Great Seall was but the King's image, but his hand-writte was his minde; but if any thing should be added above the Great Seall, for himself, he would think it verie near Treafone, leaving them to consider what it was to adde any thing above his Ma^s hand-writt. He desired to be excused if he were a little kindled, and did remember the manie favours he had of his Ma., that he possessed manie places that were fitter for others, yett none should goe before him in trust nor affectione.³ To testifie his Ma^s unwillingnesse to have dealing with THE POPE, he did remember how his Ma. refused to receave anie Ambassader from him; and how he commanded the Ambassader Lieger in France, to shew the Pope's Nuncio in Parise, that if anie of his Ministeris in his name had promised more then they had warrant, the Pope should not expect anie performance therof from him. Laft, he made (as he called it) a punctuall discourse of all the proceedings in the Lord Balmerinoch's Examinatione, and how his Ma^s memorie was a great deall better in that mater then his; and by his particular interrogations, had brought him to a Confessione: And, after ane example and verie large commendatione of the Kingdome of Scotland, and wise and grave governement of it, did remitt the judgement of that mater to them, not doubting but they would proceed in it, as his Ma^s intereffe and the weight of the mater did require.

After him, THE LORD PRIVIE SEALE⁴ had a Speech, wherof this was the preface. If he had had libertie of speech, as he had not, he would have chosen these two noble lords who had so gravelie and learnedlie spoken to have gone before him; for they had taken up the crope of all was to be collected of the present mater, so cleanlie, as they had left nothing behind to him to glean; but he did remember to have read of the nature of the bee, that at first comming upon the flowre, she did gather the honie, and after the honey being collected, she did gather the waxe. So would he, since there was no

¹ In alms; as an eleemosynary gift.

² Without, contrary to.

³ The whole of these Speeches and gratuitous affirmations were in reality addressed to the King '*behind the arras*,' and they were all so constructed, by these Court sycophants, as to be most palatable to the royal taste. The knowledge of this circumstance must sink the speakers in the estimation of all who read such abominable rodomontade, and convert all their fulsome adulation into solemn mockery or absolute farce.

⁴ The celebrated Henry Howard, Earl of Northampton, who was styled by the French Ambassador, Monsieur de Beaumont, '*one of the greatest flatterers and calumniators that ever lived*!' He was deeply involved in the murder of Sir Thomas Overbury; but died before that atrocious affair was publicly investigated. The private and intriguing Correspondence between King James and Cecil, previous to his accession to the throne of England, was carried on through the medium of this individual. See *Lord Hailes' Letters*, &c.

honey left, gather up some waxe to seale up the mater with. And first, after a large commendatione of his Ma^s so manie rare and princelie qualities, whom that mater did so highlie concerne, (which he protested he did not as a fycophant or flatterer,¹ but as a true and faithful Counseller,) he did say some thing of his affectione and dutie to the Lord Balmerinloch, with great sorrow for his error in that kind, that he should have thought it a save way for his Ma. to have left his assured true friend, which was the Queene and Estate of England, to follow after a stranger, speciallie since of his own knowledge (for the space of 19 years) it had pleased his Ma. to keepe intelligence with him. He perfittlie knew that his Ma. was most unwilling to anie such course. First, how in the 88 (1588) the Bishop of Dumblane cam in Scotland with so many great offers; and if his Ma. would have given him anie, never so little hope, the Pope would have stayed that great Armado. Nixt, come Sir James Chisholme, who dealt in the same course, and because he did not prevaill, he did break his heart, and so died. Watfone the Preist having come in Scotland and dealt with his Ma., did confesse to his lordship, that he could never have more of his Ma.—but if ever he came to the Crowne of England, that he would not come to break the law, but to keepe it: And that the said Watfone, being in priffone, some few dayes before his executione, his lo. went, by his Ma^s commandement, to examine him in that point; who declared to him, that he could never gett anie farther grant of his Ma. nor is before said: not-the-lesse, to the end he might keepe the Catholicks in better dispositione towards his Ma. he did give them better hopes. That Sir James Lindsay did bring his Ma. a Letter from the Pope, which he refused, and would not so much as suffer the same to be unclosed. Laft, since his Ma^s coming in England, there come one from the Duke of Lorane to his Ma., who being weill receaved, as the Duke of Loran's fervant, having thereafter secretly shewed unto his Ma. that he was the Pope's gentleman, and had some directions from him to his Ma., he would heare no more of him; and his Ma. did mightilie complaine that the Duk of Lorane did use him in that kind. And hereupon did he condemne the Lord Balmerinloch his course, in respect of his Ma^s unwillingnesse to have anie dealing with the Pope. He said farther, that if at that tyme when the Queen's Ambassader did expostulat, the course had been revealed, the fault had been the lesse. That it was God's singular caire over his Ma., that by the coming furthe of such a book, at such a tyme, when the Lord Balmerinloch was present to reveale the truth, his Ma^s innocencie in it was so cleared. And because that some doe justifie the cours, because of the good intentione of it, that he had read, that in good intentions three things were requisit, 1st, that they should be in things indifferent; nixt, that they should not be *contra preceptum*; laft, that they should not be *in prejudicium tertiæ personæ*. Nather of which was observed in this; because it was not a thing indifferent to the King to keepe correspondence with the Pope, being a mater prejudiciall to his estate; next, that it was *contra preceptum*, because he was not of his Religione; laft, it was *prejudicium tertij*, because the Queene of England was thereby intereffed; so as the intentione of it could not procure it anie allowance. In end, after a large commendatione of the countrie of Scotland, and his best wishes that the Kingdome of England would looke carefullie in their honour, and not admitt everie one so indifferentlie to it, following the example of Scotland, he did likewise remitt the mater to be tried and judged there; not doubting but it would be carefullie done, according to the weight of the mater and his Ma^s expectatione.

Thereafter, MY LORD CHANCELLER declared, that since that Board was his Ma^s bodie representative, and all the members of it were at his Ma^s dispositione, and alterable with the breath of his mouth; that it was his Ma^s pleasure, that the Lord Balmerinloch should no more be one of that boord. Wherupon he did produce a Warrant, signed be his Ma.; which being read by the Clerk of the Counsell, the Chancellor desired that all the Lords of the Counsell should take notice of it.

¹ 'Hem!' His Majesty must have been a 'glutton' indeed, and his appetite for flattery altogether insatiable, if these Speeches did not give him a complete surfeit! It is evident that this intriguing politician well knew what would best please the royal palate. Strange as these things may now appear, such was the King's taste,—and *de gustibus non disputandum!*

[*THIS, or near this, I would have answered, for my own justificatione; if that, by three several commandements from the Erle of Dumbar, I had not been desired to the contrarie. James Bailzie was the carrier of the message.*]

To the first Speeche, it might have been answered, that if the reverence and majestie of the person, (whom the mater was affirmed to touch in honour and safetie) the gravitie and eloquence of the speaker, and the hatefull dispositione which was against the persone which was to be censured, had not extraordinarie concurred, although the deed wanted a presedent, yett manie offences of greater importance and more perrellous presidents were smothered up, with fillence: And wher,¹ it was now first said, that the Letter might have procured his Ma. the tinfell² of the Crown of Scotland, which he had in possessione; ther was no such appearance, because ther was no Scottish man, of whatsoever qualitie, so little sensible of his Soveran's wrong, but would rather have wished his Ma. to have had correspondance politick much more with the Pope, before he had been prejudged of his undoubted title to England, speciallie since that Letter (nor no constructione can be made upon it) does carie any prejudice to Religione, or other conditione hurtfull ather to his Ma^s honour or estate. Nixt, where it was said, that the said Letter might have losed him the Crown of England, to the which he had undoubted right apparent, because the Queen might have taken exceptione att it, and so inclined some other way; first, it might have beene answered, that his Ma^s title was not at her dispositione, and if she had been discontent, there was no reasone; for since she did ever refuse to yeild him anie assurance of his succession after her, (and Spaine avowedlie, and France under hand, besides others, as competitors, daylie talked of,) although he had laboured for the friendship of all the Christian Princes in Europe, upon just and honourable conditions, and without breach of dutie to her, she had no just cause of offence: Beside that, some did not spair to talke of some unseemly plots contrived in England, about that same time, to his Ma^s prejudice. *Secoundlie*, where it was with great vehemencie and rare eloquence amplified, that that Letter had given subject and occasion to the writting of many pamphlets, wherin his Ma. was bitterlie touched, it might have been answered, that by the contrarie, it had stayed the writting of many and doing of many worse turnes, had procured his Ma^s good at the Court of Rome, the favour of all the Catholicks of Europe, but speciallie in England; and if his Ma. had been offended by anie books, they have had other grounds than that idle Letter; wherin *Bellarmino* alledgeth not, that ther was anie more, but a Letter full of courtesie, and a requist for a Cardinall; and if it had contained any other thing whereby his Ma. had been ingadged to the Pope's advantage, it had not been forgotten. Look therefore if the writting of the former books, or some other conditions then that Letter, hath not given occasion of this offence. *Thridlie*, where it was said that all the Popish Conspiracies did flow from that Letter, because the Catholicks, finding themselves disappointed of their hopes, did attempt all those devilish Treasones, it might have been answered, that if that Letter giveth anie such hope ather of the Kings Ma. being a Catholick, or toleratione, then is the argument good; but if not, then it holdeth not; and these hopes most be found out another way, and the authors of them charged with that imputatione.

The *secound* Speech, in so farre as it was carried out with the first, the same answers might have been repeated; but, where it was said, that if his Ma. had been of the knowledge of that Letter, he would have bowed the knee to Baal, appointing ane Aduocat at Rome;—that conclusion holds no more nor³ if it should be said, that the Queen, for writting manie Letters to the Turk, and appointing ane agent there, should have become a Mahumetan. Neither is there any that can doubt, but that great Statsman, who had the speech, does know verie weill, that Princes of different Religiones have their Leagues and Amities, their intercourses of Negotiatione and civill affairs, without bowing their knees to strange Gods. As to the invectives against the Pope, they were all just, and verie pertinentlie and eloquentlie delivered; yett they did not aggravat that fact, neither was there any thing in that Letter that did allow of them. As to the objections of violating the trust of a Secretarie, that

¹ Whereas.² Loss; from *tyne*, to lose.³ Than.

could not be denied; and so the partie doth grant his offence, pretending onlie, that as an expert Phisician, in a disperat disease, or a perfitte Pilot, in an extraordinarie tempest, is not alwise tyed to the precise rules of his art, so some things are permitted to Statfmen in their places; and he, perhaps, feing his Ma^s great danger; and that, for writting a stile to a Pope, he would give his enemies so great advantage, and perrell a Kingdome, he did temerariouſlie adventure his credit: And for that was talked of the nature that *fides quæ ubi semel recessit nunquam revertitur*, that politick maxime giveth ane answer, *ſi violandi regni causa*, and the more is he excusable, that it was to his master and not to himself; and as he durst and should have adventured his life to have foughten for it, so did he perrell his trust to conſerve it. To that, that a King's hand-writt, if it might be caried by his knowledge, was more dangerous than 20,000 men, that is an argument *ab incommodo*, which ſince the deid is paſt long ſince, and no harme followed upon it, neither to his Ma. nor his dominions, it followeth no more. To that of the compariſon of the broad-ſeales to the King's hand, and what is the danger to writte above any of them, belongs to the Judges and Lawyers, to determine; but in the law of reaſone and civill juſtice, where there is no fraud meant, no harme done, nor no inconvenience can enſue, the fault is the leſſe.

In the laſt Speech, moſt gravelie and eloquentlie delivered, becauſe it was for the moſt part a narratione of particulars, teſtifeing his Ma^s unwillingneſſe to writt or have any dealing with the Pope, it is like enough to be true; for if his Ma. had been willing, or wittinglie had ſett his hand to the Letter, then there had been no fault committed, ſo that cauſeth the Confeſſione of him who abuſed his Ma^s trust. And where as, his good intentione to his Ma^s ſervice, did furniſhe him ſome excuſe, that was moſt learnedlie taken away by three *caveats*, which the Divines doe require to make intentions juſtifiable; firſt, that they be in things indifferent; nixt, that they be not *contra præceptum*; thridlie, that they be not *in prejudicium tertii*: To all which it might have been answered, firſt, generallie, that the politicke courſes, ſo weill knowne to ſo great a wiſe man in ſtate maters, are not to be ruled according to the ſtrick rules of Divinitie; and particularlie, to everie *caveat* there can be nothing more indifferent, nor¹ a free Prince to writte a kind Letter to his neighbour, and to make to him a reaſonable and juſt ſute, hurtfull to no man; as for the ſecound, there is none of the commands that did forbid the King to writte to the Pope, for ſo *præceptum* in that mater is to be underſtood; thridlie, by that Letter there is no prejudice done to anie perſone; and ſince his Ma. was by no League nor Bond bound to the Queen in the contrarie, no man will think that his Ma. ſhould be answerable to ane imaginary prejudice, there being nothing contained in the ſaid Letter that in any ſort could hurt her, or any other perſone. In all the Speeches, as they were moſt gravelie and eloquentlie delivered, ſo did they yeild, everie one of them, a rare and extraordinarie commendatione to the countrie of Scotland, the grave and ancient Nobilitie, the wiſe Counſell of Eſtate, the learned Judges, and the moſt tender regard, in all their actions, to his Ma.; wherof, as everie man did conſider the end, ſo they ought² no ſmall obligatione to them, for their exceeding kindneſſe.

COPIE of the SPEECH which I ſpak, indeid, to THE COUNSELL, after the three Harangues before written.

MY verie honourable Lords, I find true this day in experience that which I had oft read and heard, that no exceeding joy,³ &c.

The Biſhope of Glaſgow,⁴ I think, with the counſell of the Erle of Wigtonne,⁵ deſpaired, before my coming to Court, that the Letter to the Pope ſhould doe me anie harme; thinking, either that I ſhould be denied it, or that it was of ſo ſmall conſequence as it could import no cryme. They had

¹ Than. ² Owed. ³ See Vol. II. p. 578. Opposite the words 'but alace!' &c. (line 10 from bottom of the page,) there is written on the margin, 'These words added at the E. of Dumbars desire, to please HIS MA.' ⁴ John Spottiswood, afterwards Lord Chancellor (1634). He was translated to St Andrews, 1615. ⁵ John, sixth Lord Fleming, was created Earl of Wigton, Mar. 19, 1606. He married, 1st, Lillias, only daughter of John, 3d Earl of Montrose; 2dly, Sarah, eldest daughter of John, Lord Herries, and relict of Sir James Johnston of that ilk.

invented againſt me ſome interrogatours, whereupon the King ſhould have examined me, anent the Powder Treafone, which were kept cloſſe from me, till immediatlie before my comming away: Then they were brought to me by my truſty friend Sir Alexander Hay, never letting me know of them, albeit they had been in his hands three moneths before. The juſt copie I have incloſed hear-with, and my anſwers. They are as frivolous as they are falſe; alwiſe I will my friends may ſee what hee beene the malicious curioſitie of my enemies to my diſgrace. I ſuſpect the Biſhop of Glaſgow, the Earle of Wigtoun and Sir Alexander Hay; and whatſoever the Earle of Wigtoun knew, was not kept from Killfyt.¹

In a Proclamatione, made at Weſtminſter, the 22 of February, 1603, which is imprinted, there is contained theſe words, in ſpeaking of Foreign Princes: ‘ Among which forran powers, although We acknowledge ourſelves perſonallie ſo much beholden to the new BISHOPE OF ROME, for his kind offices and privat temporall cariage towards us in manie things, as We ſhall be ever readie to requyte the ſame toward him, as Biſhope of Rome, in ſtate and conditione as a ſecular Prince:’ Yet conferr this Proclamatione with his Ma^s firſt Speeche in the Parliament Houſe, which is alſo printed, wherein he acknowledgeth his particular obligation to POPE CLEMENT, whereby it may be prefumed, as matters then were, what great diſcontentment it could have beene to his Ma. to writte a Letter to him. Like as, many other Negotiationes which his Ma. had with him are more nor notoriouſlie known.

THE *ſumme of the DECLARATIONE, ſubſcribed 18 November, 1608.*

THAT at my firſt Examinatione I did denie, extenuatt and transferre the knowledge of that Letter; therefore, I did Confeſſe, that, at the ſoliſtatione of the Biſhope of Glaſgow, who was his Ma^s Ambaſſader, and the (Biſhope) of Vaizon, I laboured to have a correſpondence betwixt HIS MA. and THE POPE, I moved his Ma. in it, and found him unwilling. Therafter, I conſpired with Sir Edward Drummond to gett a Letter under his Ma^s hand to the Pope. Sir Edward drew up the Letter. I ſaw the draught of it, and corrected it. That one day, in the morning, when his Ma. paſt to hunting, I brought him a number of Letters to be ſigned, in favours of the Biſhop of Vaizone, to the Dukes of Sauoy, Florence, and ſome Cardinals; among the which Letters I ſhifted in that Letter to the Pope, having no ſuperſcriptione in the beginning, nor above his Ma^s name; and ſo gott his Ma^s name to it without his knowledge. That the Letter contained nothing but thanks to the Pope for his bygane kindneſſe, and deſire of continuance; that he would be pleaſed to advance the Biſhope of Vaizone to be a Cardinall, that his Ma. might have more intelligence of his affairs at that Court. That the Letters to the Pope were written in Roman Letters. I directed Sir Edward to writte the Popes ſtiles in the beginning; and in the end, ‘ *Sanctitas*’ and ‘ *Filius*.’ That the ſaid Letter was caſhett² at my command, be one of my ſervants who kepted the caſhett.² That in the late Queen’s tyme, ſome expoſtulation being made by her Ambaſſader anent the ſaid Letter, I did denie it, and cauſed Sir Edward, being come home, juſtifie my denyall, and that he had caried no ſuch Letter; being examined therupon be ſome of the Counſell. That he, being committed in ward, I laboured for him and procured his releefe. That I dealt earneſtly with him to returne the principall Letter, who promiſed to doe ſoe.³

[The Narrative is here interrupted by Calderwood’s own work. It is afterwards reſumed, being introduced by Calderwood in the following paſſage: ‘ About the beginning of December, the Secre-

¹ Sir William Livingſton, Lord Kilſyth, one of the ordinary Lords of Session.

² A ſtamp contrived to imitate the King’s ſignature, to ſave him the manual labour of ſigning certain official documents. It is ſtill in uſe, and is applied to particular writs not requiring the royal ‘ Sign-manual.’

³ CALDERWOOD remarks here. ‘ The Preſident was ſent back to Scotland as a priſoner, with a Guard attending upon him, to be further tryed. When he came to Newcaſtle, he ſent the Laird of Pitloure to informe Mr James Melvill how he was dealt with, for ſtanding for the freedome of our countrie, and croſſing of the Biſhopes and their proceedings; and deſired Mr James to writte to the good brethren at home, as he thought meet himſelf. When he came out of Newcaſtle, it was marked that he ſhed tears, which was a verie baſe thing in him. At Berwick he was heard to utter theſe words, “ I wiſh I had beene made a ſheep-keeper when I was made a ſcholler.”’

tare Sir James Elphinstone, Prefident of the Colledge of Justice, came to Berwick, accompanied by the Englishe Guard and some of the Earle of Dumbar's servants. He was received by the Captain of the Scottish Guard, Sir David Murrey Lord Skoone, latelie Comptroller, accompanied with the Scottish Guard and some of his friends; and was convoyed to waird to Falkland. The manner of his parting from London to this countrie he has sett down himself, as hear followeth, continuing his former relatione.']

ORDER hereafter being taken about my returning, my Lord Dumbar sent James Bailie to shew me, that there was some of the Guard, onlie for a shew, appointed to attend me; desiring I would not take it in evill part. They would ride with their coats till they were past Royftoun, where his Ma. was; and from that, as other privat servants. He sent me word divers times that he would meet with me; but whill¹ the Earle of Wigtonne and the Bishops were gone, he could not, for suspicione.² So the verie day they parted, in the morning at ten hours, his lo. came to my house, although I had offered to make the travell; but, because I was under commandement, it could not be. All this tyme I was attended to be two of his Gentlemen, who used me verie kindlie. The one was Alexander Auchinmowtie, brother to John Auchinmowtie; the other, James Carmichaell, sone to Watt Carmichaell of the Park; to whome I wishe my friends or to anie of theirs to be thankfull. At our meeting, I renewed to him what had past betwixt my Lord Burlie and me, my particular offers, for assurance of his Lordship's friendship, what I did expect mutuallie of him, as the Lord Burlie had promised in his name. All which he was weill pleased with, and how soone my trouble was ended, which should be upon his coming in the countrie, he would enter in the due performance of every particular, and would establish such an alliance with me as should not be discovered. I complained that my waird³ was altered, because he had promised that I should remaine in the Castle of St Andrewes: He excused the estate of the house, and that he had as great credit in Falkland as in St Andrewes. Nixt, that the Lord Skoones Warrant was so strait: His answer was, that that was onlie done for the fashione; that the Bishops and Sir Alexander Hay procured it; but he would desire the Lord Skoon, by James Bailie, to use me well. He desired me to keepe all secret; and, as he was a Christian, every thing should (be) performed with no less care than I were his own brother, or his two daughters. He willed me not to be suspicious of any his actions, because it behoved him to follow the King's honour, please the Bishops and others that were my unfriends, in outward shewes, that he might the more easilie worke my turne to my contentment. I think that he entered in a speciall friendship with my Lady Drummond, and gave her that assurance of my life, estate, (and) Ropars office that he gave to the Lord Burlie.

Being come to Falkland to my waird, and more hardlie used nor I did expect, I directed to Court my cousin Pitlowre to put the Earl of Dumbar in memorie. My worthie friend the Lord Burlie tooke the pains likewise to go there, to make all former conditions sure; and, as I was informed, his Ma. directed no further, but that, in a Justice Court to be holden at St Andrewes, (for I desired it should not be in Edinburgh,) I should become in Will, and his Ma. to declare his Will, at his pleasure. But when my Lord of Dumbar came to Edinburgh, and found that Sir William Hart (who had gotten a promise of my place in Session) to putt me to ane Affise, and my Lord Collector⁴ to be Affessor, and a number of Affise that would convicte me upon my own Confession, which is more than to gett me in Will. The Earle of Dumbar having advised with the Bishops, durst leave nothing undone of extremitie against me; and the Collector, being more circumspect nor the rest of his fellows, and most desirous to have me sure, resolved the Earll, that none of my Depositiones made in England would serve against me, except I ratified them here. Whereupon, the coming of the Counsell to Falkland was appointed; and although I had been verie carelesse of the mater, because I was certified that there was no more ado but to take me, judicillie, in Will; yett, knowing of their coming to Falkland, I

¹ Until.

² Viz. in case the Earl and Bishop should suspect collusion between the Chancellor and Balmerino.

³ Place of confinement.

⁴ Mr John Prestoun of Pennycuik.

imagined at first the cause of it, and was resolved to have past from everie point of these Depositions, except onlie the naiked veritie of the deid, wherupone no crime could follow; for most lawfullie I could have come against my Depositione, because it was made extrajudicialle. And, in case they would make the Counsell of England a judicature, first, it was subscribed, not before the Counsell, but in the Earle of Salisburie's cabinet, before so many of the Counsell as are before mentioned; *nixt*, the Counsell of England could be no Judges competent to me, likeas I had lawfullie declin'd them of before; *farther*, it was made upon the conditione above mentioned, which I would have referred absolutely to the Earl of Dumbar's oath; *last*, it was revocable, as made for fear of my life, or perpetuall imprisonment in the Towre. If they would have made my Dittay Treason, because it is so called in my Depositiones, the calling of a deed Treason, *non mutat naturam facti*; as if I would confesse I had traitorously conspired to kill one of the King's bucks, would not convict me of Treason; or that I had treasonably broken waird, being committed for fourtie pound of civill debt; so, the procuring of a common Letter of Recommendation, containing no Treason, prejudice to the King, nor Estate, could never be Treason. And whear as, it was affirmed to tuche the Princes honour, the King did never refuse to acknowledge the Pope as a Catholick Prince, to whom he acknowledged himself bound; and so it was no dishonour to him to writte to him, seing the greatest Princes in Europe doe it ordinarlie, both of the Reformed Religione and others. That that Letter was prejudiciall to his Ma., his Religione, countrie and Estate, it could never be verified; for, except my own Depositione, (revoked, as I have said,) there could be no other verificatione, either by writte or witnesses; so no honest Judge or Assessor that had either conscience or honour could have sustained such a Dittay. And if they would have made it *Crimen Falsi*, out of the Lawes of the Majestie, (*Reg. Maj.*) I would have denied that my life could have been judged by the Majestie; more then ane hundreth kyne may be satisfactione for the King's Murther, which the Majestie calles killing. I remember, Mr Thomas Craige answered to *generaliter verum, generaliter falsum*, in a civill mater, *quibus casibus tenetur hæres præstare factum paternum*, which is lesse nor my life. Lastlie, that word, *Charta domini Regis*, is not to be understood of a privat Miffive, wherby the King or a partie is not prejudged; but a Charter, or evidence, wherby either the King or subject may losse his right. If they would have made it out of the Decretals, cap. 5, *de Judiciis*, albeit it say, *non esse immunem a Crimine Falsi*, yett, according to all the Doctors, it most be understood to be *scriptura damnosa et fraudulenta*, for *omne Crimen Falsi* is not capitall, *ubi neque est damnum, neque esse potuit*, but onlie to be punishable *arbitrio Judicis, pro ratione rei et personarum*. And this is the cleare resolutione of Julius Clarus and all the Doctors; so that albeit I had never consulted anie Advocat, nor had never any bookes to studie the mater, yett the light of reasone was so cleare, as no Judge but Sir William Hart, whom I might have lawfullie declin'd, would have sustained such a lybell.

The Earle of Dumbar, fearing I should alter, upon this new alteratione sent the Lord Burle unto me; who, as he dealt ever honourable with me, so I was plaine with him, that I would not stand to my Depositiones made in England, and that I would challenge the Earle, upon his oath, of the conditione made unto me at the subscribing therof. There was great intercession made that I would have a regarde to the Earle of Dumbar's credit, and the advantage both my publick enemies and his secreit ill-willers would make, if that turne were not done to his Ma's contentment; and that, however I might resist his Ma. at this time, wherof the event, in respect of the honest dispositione of the Judge and principall Assessor was uncertaine, yett I would be kepted in continuall prisone; and, seing the Earl of Dumbar was willing to secure all things promised before, a sentence of Conviction was no more hurtfull to me nor either a coming in Will, nor in entering in a contestatione with the King, having so great enemies both at Court and at home. In end, upone promises renewed, and my desire of quietnesse, and that my enemies should acquire no more credit by my troubles, and conditiones past betuixt the Earle of Dumbar and me to stand sure, I was content to abide at my former Depositiones.

So the Earle of Dumbar, in prefence of the Lords of Skoone and Burlie, both after particular affurance and solemne oathe to my self, renewed what he had promised before, anent my life and estate, and that he knew perfectlie it was never his Ma^s minde to (take) my life.

Nixt followed my Conviction at St Andrewes, wherin I was the onlie actor my self, to give his Ma^s fatisfactione; following, in every point, the Lord of Dumbar's directione, brought to me either by the Lord Burlie or the Lord Skoone.

A COPIE of the SPEECH I had at St Andrewes, at the time of my Convictione.

THERE is none of your Lordschips but understand sufficientlie that if I would stand contentioulle to my Defences, no Depositione, made by me in England, could prejudge me in any Tryall Criminall I was to sustaine; neverthelesse, as in all this actione, from the beginning, I have preferred the truth of his Ma^s innocencie to the preservatione of my life and estate,¹ so I am so farre from retreating what I have said there, before that noble and most grave Counsell; that if, in more cleare termes, I could aggravat the just desert of my own haynous offence, and make his Ma^s undefiled sinceritie and innocencie knowne to all the world, I would most willinglie doe the same. I were not worthie life, if my life, that hes had no happineffe but under the glances of his benignitie, I should labour to be preserved, with the smallest imputatione that might staine his Ma^s honour. No man knoweth better his Ma^s naturall clemencie, and how unwillinglie his Ma. is forced with this severitie to prosecute the truth of this callumnious imputatione; which, by my abuse of his trust, is drawn upon his most innocent Ma. Therfor, I ratifie whatsoever I have formerly depoune; and, if no otherwise his Ma^s honour may be sufficiently exonerated, I willinglie offer my blood and poore estate to expiat my offence; and to teach others, by my exampill, to goe no farther in thair master's service then they have sufficient Warrant.

BUT immediatlie after the Ratificatione of my Depositions, in Falkland, the Earle of Dumbar sent my Lord Burlie to Court, to shew his Ma. what fatisfactione I had given, to procure me all the favour he could, and to hold my friends there buffie. Likeas, the Earle concluded, that immediatlie after my Convictione, my brothers sone should goe post to Court, for my Remission; and that the Lord Burlie should stay his coming, and concurre with him to that effect. And albeit it was promised to me, by my Lord Burlie, in the Earle of Dumbar's name, that Ropar's Reversione should be safe to me, yett the said Earle, fearing Sir Robert Ker's credit,² made me to yield to passe that to him, which was the best hope I had of relief of my great debt, and help of my children. So as I have in all this, from the beginning, allutterlie reposed upon the Earle of Dumbar; and, by his onlie meanes, am brought in this misery, out of the which, if, according to his manie promises, he releave me, I and all mine are the

¹ It may be proper here to notice, that Lord Balmerinloch, besides his numerous Offices, was possessed of very extensive landed estates, such as the baronies of *Balmerinloch*, *Barnton*, *Barrie*, *Ballumby*, *Innerpeffer*, *Dingwall*, *Balgownie* and *Restalrig*, &c. By his first wife, Sarah, daughter of Sir John Menteith of Kerse, he had (1.) *John*, afterwards *second Lord Balmerinloch*. And by his second wife, Marjory, daughter of Hugh Maxwell of Tealing, he had (2.) *James*, who was created *Lord Couper*. (3.) *Anne*, married to Andrew, first Lord Frazer; and (4.) *Mary*, married to John Hamilton of Blair.—See *Wood's Peerage*, &c. ² The corrupt favourite, *Sir Robert Kerr* or *Carr*, who attended King James to England, and was invested with the Order of the Bath at his Coronation, for a long period had unlimited sway at Court, and had the absolute disposal of all the Royal favours. He was successively created Gentleman of the Bedchamber, Lord High Treasurer of Scotland, 1611; Viscount Rochester, Mar. 25, 1612; Knight of the Garter, May, 1612; Earl of Somerset and Baron of Brancepeth, Nov. 3, 1613; Chamberlain of the Household; and sworn a Privy Councillor, the same year. The character of this infamous person, his shameless marriage to the divorced Countess of Essex, the murder of Sir Thomas Overbury, for which he and his Countess were convicted, May 24, 1616, (see *Howell's State Trials*, II. pp. 951 to 1022); their subsequent release from the Tower, Jan. 1621-2; and their pardon by the King, under the Great Seal, Oct. 7, 1624, in the face of his Majesty's solemn and awful imprecation, in reference to the murderers of Overbury, that 'IF I SPARE ANY THAT ARE GUILTY, GOD'S CURSE LIGHT ON ME AND MY POSTERITY FOR EVER!' All the circumstances of his life are so well known, that it is only necessary to recall these few leading points to the reader's memory. He died in London, and was buried in the Church of St. Paul's, Covent-Garden, Jul. 17, 1645. It may be interesting to refer to the numerous Memoirs and Histories relating to this remarkable period, in illustration of the above remarks. In particular, reference may be made to *Lord Bacon's Works*, I. 87, also to his *Correspondence*, and to *Weldon's Court of K. James*, p. 99, &c., for the almost incredible dissimulation practised by James on his parting with Somerset at Royston, when his fate was for ever sealed, and when he had determined that 'he should see his face no more for ever.'

more bound to him ; otherwise, there is a God in Heaven will have regard to his dealing ; and, either here or hence, he will suffer for it ! The vile and detestable ingratitude of Sir Alexander Hay, I am sure, the Lord will not suffer unpunished ! As for others of our Natiōne, who have little regarde wherefore I suffer at Englishmen's hands, God forgive them ! The day will come, that they and theirs will weepe for it ! I pray God bleſſe his Ma. ; and that his undeserved rigour against me (who, I am sure, is perswaded, in his heart, I never thought ane undutifull thought against him, his Crown, countrie, nor estate,) be not layed to his charge, in that great day, when his crown and scepter will be layed at his feet, and he must yeild a reckning of his stewardship ! And, so may I be judged, if I had anie other course, in all that or anie other service that ever I was putt in trust of be his Ma., but his Ma^s weale and honour, and the libertie and good of my countrie, which is miserable, comming in a vile servitude ; the foresight wherof is all my wracke !

This the naiked truth of all this mater, written in such haste, and at such occasions as I could, in respect of my strait keeping ; and whatever, for his Ma^s satisfactiōne, I have written or said upone the false promisses and traterous intysemments of those whom I trusted, different from this my cleare and true Depositione, as God is my witnesse, it is false ! FALKLAND, the 10 of May, 1609.

BALMERINOC.

VIII. CALDERWOOD'S ACCOUNT¹ of Lord Balmerinock's conduct, from the period of his Conviction to his Death.

WHEN he was brought from Falkland to Leith, after his Convictione at St Andrewes, and was received be the toun of Edinburgh, in their armour ; when he came to Leith-Winde foote, or the Nether-bow-Port, he was commanded to light off his horse, for they receave no ryding prisoners. He excused himself with the infirmitie of the goute in his feete ; and willed them to shew him that much courtesie, as to suffer him to ride foreward. One of the toun, standing hard beside, answered *Pamfara, tantara* !² my Lord ! Now, when some directed from the Counsell of Edinburgh, long before his fall, requeisted him not to mainteane one of his dependers against them, in ane actione they had against him, for they could be more stedible³ to him then that man, he answered *Pamfara, tantara* ! This taunt is now repeated to him with a taunt, and he was forced to light off his horse. Thirdlie, Its to be observed, that the Doome being delayed, after his convictione at St Andrewes, till his Ma^s farther pleasure were knowne, in the tolbooth of Edinburgh upon the first of March, in presence of the Justice and the Lords of Counsell, after reading of his Convictione, that he should be beheaded, quartered, and demeaned like a tratour, and his members to be sett upon the Ports, and cheif touns, yett he appeared to have some good hope of releef. He would have spoken something, but could not utter his minde : The Earle of Dumbar commanded to remove him incontinent ! After dinner, he was conveyed to Leith-Winde-foote, and delivered to the Shireff of the shire ; but manie wondred wherefore he was suffered, when he went out of Edinburgh, to carie his sword about him. It was thought strange that such a thing should be suffered in a condemned tratour. Some thought, therefore, there was no danger ; others thought he was caried to Falkland, that he might suffer there, where the fault was committed, and died after in displeasure, fearing ever the worst. Fourtlie, it is to be observed,

¹ See *Cald. Church Hist.* MS. Adv. Library, VII. 283.

² An exclamation in some measure equivalent to 'Nonsense !' 'Humbug !' &c. expressive of contemptuous incredulity and derision ; and applied by those who have a bombastic or high-sounding parade of empty words addressed to them, which, like the idle flourish of a trumpet, seem calculated to convey no meaning. Perhaps this contemptuous expression took its rise from the remarkably alliterative and playful line of *Old Ennius*, a rough soldier, who sacrificed rather liberally to Bacchus, and who wrote his heroics best when under the influence of the rosy God. Many of his verses smell strongly of the goblet !

'TUM TUBA TERRIBILEI SONITU TARATANTARA DIXIT !'

The words *tantafera, tantaferata*, are still used in Italy to signify *nonsense*, &c. ; and the French also familiarly use *tarare* ! and *tarare-pon-pon* ! 'pour marquer qu'on se moque de ce qu'on entend dire—ou qu'on ne le croit pas,' &c. *Dict. de l'Acad. Fran.* 1813. This reproachful retort, and the taunt of the Edinburgh citizen, must have stung the fallen courtier to the quick.

³ Be of more service to him ; stand him in better *stead*.

that about the same time, the King's reply to *Mathæus Tortus*, with a monitorie preface to the Emperor and all Christian Princes come furth in print, no mention was made in that booke of Sir James Elphinstoune's Confession or Depositions; which might have served to great use, to have purged him of *Tortus* his imputations. Yea, when he was in England, and had come in the King's will, the King could not be content till he *subscribed* his Depositions, as Dumbar assured him; because the not subscribing hindered the progresse of the Kings Answer to *Tortus* booke, quhair of his Depositione behoved to be a part. He therefore sett too his hand, in presence of some Noblemen and others, as yee may see in his own Relatione. Because the Depositiones were omitted in the Answer to *Mathæus Tortus*, and upon other considerations, manie doubted of the sinceritie of this proceeding against him; and suspected, that he had taken upon him the crime to currie the Kings favour, he keeping his credit. Mr Andrewes, indeed, in a Letter written the 23 of March to his Nephew Mr James, setteth down his opinioun in these words. *De judicio quid ego sentiam uno verbo accipe; inglorie fuit, est et erit, ut ego præsentio, contra nos vero seria omnia et serio—nescit regnare qui nescit dissimulare.*¹ Since heart is free,² &c. Fiftlie, it is to be observed that Bishops, notwithstanding of his paines and dilligence taken at Linlithgow, and the manie Proclamations penned be him, spytfull enewgh against the Ministers, they prove now at this tyme his great enemies, and none so busie to seeke his overthrow! It may be, the small countenance he kythed, in Counsell, in favour of Mr John Murrey, or the like occasions, have given them occasione to seeke his removell out of the way; that another Statfman, more foreward for their course, may be placed in his roome. But then we may see the deep malice and hatred of aspiring Prelats, that seek the overthrow of all that stand in their way!

About the beginning of October (1609), there came a Warrant from the King to give libertie to the President to have free ward in Falkland and a myle about; he finding cautione not to escape, under the paine of Fourtie Thousand pounds.

Mr James Elphinstone, Lord of Balmerinock, and latly Secretary, ended his dayes, about the end of May (1612).

IX. LETTER *from* THE KING *to* THE PRIVY COUNCIL OF SCOTLAND, *informing them of the Examination and Confession of the Lord Balmerinock.*³

RICHT trustie and weilbeloveit cofines and counfallouris, We greatt 3ow weell. TYME, the moder of trewth, haveing now discovered and brocht to lycht that long obscureid and moift heynous offence and cryme committed be the Lord of Balmerinock aganes our honour, credeitt, and reputatioun, and which now by his cleir Confessioun is manifest to all the world, and We thairby purgeit of thofe moift wniuft and wrangous imputationes, quhilkis We did wnderly, by his foull abuse of that trust we had in him; quhair of boith We and all our subiectis have no small caus to thank God; since the careage of the actioun, in the discoverie of it, may justlie be said to have bene done by Godis awin finger! And as We have hithertillis spaired to acquent 3ow particularlie, with the hole circumstances of his Confessioun and Examinatioun, vntill such tyme as the same wes here finissched; so, by the rycht reverent Fader in God and our rycht trustie counfallour the Archbifhope of Glasgaw, (quho wes ane eie witnes and heirar of the same, and now is returning thither,) 3ow may be at lenth informed of the same. Bot, becaus the Devill wants his awin suppoistis reddie to mak false subgestiounes, in preassing, by misconstruing of thingis, to harme the trewth reveilled; and that thair man be perhappis

¹ So in the original, but very obscure, and evidently a wrong reading.

² Perhaps referring to the old saw,

' Since word is thrall and thought is free,
Keep well thy tongue, I counsel thee.'

³ This and the two following Letters are taken from a valuable Collection of State Papers transcribed by Thomas Earl of Hadington, (Sir Tho. Hamilton,) preserved in the General Register House, Edinburgh; which did not come to the Editor's knowledge till nearly the whole of the preceding Appendix was printed.

sum false rumouris and bruttis thair spred, in extenuating the qualitie of the offence one his pairt, and deryveing in sum sort a pairt of the blame of that mater on ws; as it is a proud malapairt baldnes and presumptioun for the best of our subiectis to medill in any thing that may concerne our credeit and honour, without a varie good warrant; and that all pretenffes of mistaking our trusting to wncertane reportis ar so far to be misregairdit, as thay rather justlie deserue the greater feueretie to be vsed aganes fuche as will excuse tham selffis thairby; so, to repress such insolent wantonnes, in any of our subiectis pair, who aither out of malice doe forge thame, or out of thair vaine, folefhe, and idill breanes do frame thame, We will and command 3ow to tak particular tryall of all fuche as hes bene or heir-after false spreddaris of any rumouris or bruttis in this mater, wtherwayis nor false by the said Archbishop reportit wnto 3ow; and that 3ow caus the rigoure and extreamitie of our lawis to be execut aganes thame! that thairin We may have a speciall prooff quhat dew accompt 3ow mak of our reputioun and credit, which wnto ws (is) moir deirar nor our varie lyffe! And referring all farder to the Archbishopis relatione, whome We will 3ow to trust, We bid 3ow fairweill. FROM our Court, at Royftoun, the 21 of November, 1608. [JAMES R.]

To our rycht trustie and weilbelouit cosinges and counfallouris, the Erll of Dumfermeling, our Chancellor, and remanent Lordis and wtheris of our PRIVIE COUNSALL of that our Kingdome of SCOTLAND.

X. LETTER *from* THE PRIVY COUNCIL OF SCOTLAND *to* THE KING.

Moist gracious Souerane,

WE reffaveid your Ma. Letter of the 21 of November; and hes hard, at greitt lenth, the relatione made by the reverend Fader in God 3our trustie Counfallour the Archbishope of Glasgou, anent the Confessioun and hole circumstances of that lang obscured and moist heynous and inexcusabill offence committit be the Lord Balmerinoch aganes 3our credeit, honour, and reputioun; quhairin, as fenci-bill and feeling memberis of so glorious and gracious a head, finding our awin intereffis, greiff and sorrow that 3our Ma^s most famous and vnspotted name, honoure, and credeit, which 3our heyne hes to this houre so religiouse conservit in all puritie, sould have bene so wnworthellie, and in so heich a point, brocht in questioun be ony of our number, quho hes that honour to be selectit be 3our Ma. to the cheiff credeit of 3our service heir; so, with moist joyfull, humbill, and thankfull hartis to God, we acquawleg that greit bliffing and benefeit which it hes pleasit his Devyne Ma^{tie} to schew wnto 3our hienes by the detecting and discoverie of that purpoise, and vindicating the sinceretie and innocencie of 3our royall hart frome all suspitioun of the wrangouse and wniust imputationes which 3our heyne wnderlay thairin; manifesting thairby his Devyne caire and Providence which he hes evir had over 3our sacreid persoun, honour, and estait, and in quhat detestatione he holdeth all practizes and purpoisses prejudiciall thairvnto. And quhairas, in the censuring of this fact befor 3our Ma^s honourabill Privie Counfall of that kingdome, thay, be 3our Ma. directione, (we doubt not) have remittit the full tryall pairof to the lawis and formes of this country, with many demonstratiounes and oppin Speeches, concerning the good opinioun thay have of the equitie of our lawis, and cinferitie of our effectioun in 3our Ma. service, we have not onely infinite occasioun, with all humilitie, first to thank 3our sacred Ma., and nixt thame, for so respectie a reservatioun to ws of that whiche 3our Ma. knowis to be proper and dew to the privilege and freedome of this 3our auntient and nobill Croune. Bot we hop, God willing, to give wnto 3our Ma. a prooff, with all fidelitie, caire, and sinciretie, we fall prosequite and follow out quatevir it fall pleis 3our sacreid Ma. in 3our princely wisdom to command, als weill in this as in any wther thing els, tuiching 3our hienes, in honour and estate. And, in the meantyme, if any of 3our Ma. subiectis hes bene or false so wndewtifull, fooleishe, and wnworthie, as to give oute any false bruitis and rumouris aganes the wndouttit trewth and varitie of this mater, or to the extenuating pairof in any poynt, we fall not fail so exactlie to examen, try, and puneishe the famen, as wtheris false terriset to fall in the lyk error heirefter. And sua, praying God still to vp-

hold 3our sacreid Ma. with all 3our royall progenie wnder his Dewyne protectione and fauffgaird,
we rest for ever

3our Ma. most humbill and obedient subjectis and feruitouris,
A. CANCELL^s. SANTAND^s. MAR. PERTH. LOTHEANE. BUGCLEUCHE. TORPHICHEN.
HALIRUDHOUSE. BEULIE. GAIRLEIS. ROISS. J. COKBURNE. R. COKBURNE.
S. T. HAMILTOUN. JO. PRESTOUN. S^r ROBERT MELUILL. P. ROLLOK.

ED^r, 6 December, 1608.

XI. LETTER *from* THE KING *to* THE PRIVY COUNCIL OF SCOTLAND, *with*
WARRANT *for the enlargement of Lord Balmerinoch.*

RICHT trustie and weilbeloveit cousines and Counfallouris, We greete 3ow weel. WNDERSTAND-
ING of the evill constitutioun in helth, and feiknes in body, of the leat Lord of Balmerinoch, by ref-
foune of his detentioun and cloise keiping within our Palise of Falkland, and in the foire Toure¹
pairof; and humill fute, for this caus, being mead wnto ws, for his enlargement, in sum foirt; We
haif bene pleiffit to grant our Licence, for his libertie and friedome, within our said Palice and a myle
in circuite round about the fame; upoun conditioun alwayis, that he doe not transcend the boundis
prefixit; and that he find sufficient responsuall landit gentill men actit in 3our buikis, as cautioneris and
fouerteis for his performance of the said conditioun, vnder the pane of xl^m li.² vsual Scoittis money.
For whiche caus, We haue thocht meet to will 3ow to direct to the said Court of Falkland, quhair his
present place and residence of abode is, 3our Clerk of Counsell, with the Licence heirwith sent, com-
manding 3our said Clerk to ressaue the foirsaid act of caution of sufficient landit men, boundin vnder
the foume aboue specifit, for performing the conditioun aboue writtin, of his conteining him selff and
not exceiding the boundis of his confynning; and heirvpoun the said Clerk to delyver vnto him the
foirsaid Licence, to be his warrand of this his enlairement. And so We bid 3ow fairweele. ROYSTOUNE,
first of October, 1609. [JAMES R.]

Slaughter.

Mar. 14, 1609.—JOHN GLENDONING of Drumrasche.

Dilaitit of airt and pairt of the slauchter of vmq^{le} George Stewart, brother
germane to vmq^{le} Mathow Stewart of Dunduf.

PERSEWAR, Williame Stewart of Dunduf, brother-sonne.

THE JUSTICE, of consent of ather pairtie, Continewis this dyet to the thrid
day of the Air,³ ('Kirkculdbricht?') or soner vpone xv dayis wairning.

¹ Fore or front tower.

² L.40,000.

³ What took place at the Justice-air has not fallen
under the Editor's observation. It is likely the case was compromised by payment of a pecuniary fine
to the private prosecutor; on which 'Letters of Slaines' would follow, as a warrant for the King's Re-
mission. In cases of Slaughter or unpremeditated Homicide, in a skirmish, it was a common manner
of withdrawing *the instance*, for both parties to concur in a continuation of the *diet* to the Justice-air.
Another mode was to use influence with the 'Baron of the Regality,' &c. within whose jurisdiction
the parties resided, to *repledge* them to his Court, and where the matter was easily hushed up. The
King's Remission, in case of accidents, was also afterwards procured, lest future feud should occasion
a renewal of the prosecution, and perhaps terminate fatally to the homicide.

78/4/5F/51



hold 3our sacreid Ma. with all 3our royall progenie wnder his Dewyne protectione and fauffgaird, we rest for ever

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Pitcairn, Robert,

Ancient criminal trials in Scotland compiled from the original records and
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4 Crim. 123 t-2,1/2

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